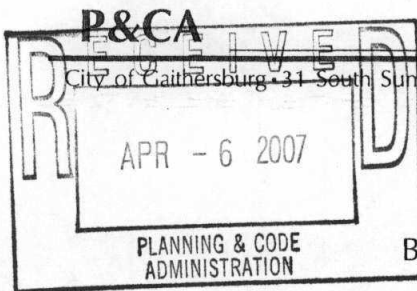


INDEX OF MEMORANDA
A-477(A)

No.

- 1) Application for Special Exception
- 2) Receipt of application fee
- 3) Applicant's Statement and Summary of Proof
- 4) Board of Appeals Resolution A-477
- 5) Communication Site Lease Agreement
- 6) Clearwire US, LLC – Leasing, Zoning and Permitting Authorization
- 7) Map Designation 3, City of Gaithersburg Land Use Plan
- 8) Clearwire Planned System without site MD-WSH010d
- 9) Clearwire Planned System with site MD-WSH010d
- 10) Site Plan, Title Sheet
- 11) Roof Plan
- 12) Partial Plans
- 13) Building Elevation
- 14) Site Plan, Title Sheet (reduced copy)
- 15) Roof Plan (reduced copy)
- 16) Partial Plans (reduced copy)
- 17) Building Elevation (reduced copy)
- 18) Copy of Official Zoning Map
- 19) Letter requesting publication of Notice of Public Hearing for A-477(A) in the April 25, 2007 edition of the *Gaithersburg Gazette*
- 20) Notice of Public Hearing as sent April 25, 2007

- 21) List of all parties notified
- 22) Draft Resolution prepared by staff
- 23) CPC from Planning Commission, with recommendation, May 3, 2007



PLANNING AND CODE ADMINISTRATION



City of Gaithersburg • 31 South Summit Avenue • Gaithersburg, Maryland 20877 • Telephone: (301) 258-6330 • Fax: (301) 258-6336
plancode@gaitersburgmd.gov • www.gaithersburgmd.gov

BOARD OF APPEALS

SPECIAL EXCEPTION APPLICATION

In accordance with Chapter 24, Article VII, Section 24-187-190 of the City Code

\$ Paid \$4,000

A-477(A)
~~A-532~~

Application No.	A-532
Date Filed	4.6.07
PC Agenda Date	5/2/07
Property Posted	
Legal Ad	
PC Recommendation	
BOA Hearing	5/10/07
Decision	
Time Limit	
Date of Decision	
Opinion Rendered	

SUBJECT PROPERTY

ADDRESS 415 Russell Ave
ZONING CLASSIFICATION R-90
LOT _____ BLOCK _____ SUBDIVISION 201

APPLICANT Adam Knobel for ClearWire US TELEPHONE 410-712-7092 Ext. 1083
ADDRESS 7380 Coca Cola Dr., Suite 106, Hanover, MD 21076

SPECIAL EXCEPTION TYPE _____

NATURE OF APPLICATION

Briefly describe application request referencing appropriate section of City Code.

Pursuant to sections 24-167A(D)(1) & 24-167A(D)(2) of the zoning Ordinance, We are seeking a special exception for a telecommunication facility as described herein.

List case numbers of all applications filed within the past three (3) years pertaining to any portion of subject property.

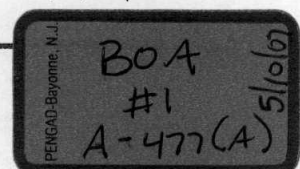
SUBMISSION REQUIREMENTS

1. **A written statement** explaining the request to the Board of Appeals.
2. **Supporting documentation**, see list on reverse side.
3. **Fees**, see separate schedule.

I have read and complied with the submission requirements and affirm that all statements contained herein are true and correct.

Signature [Signature]

Date 4/6/07



SUBMISSION REQUIREMENTS

In accordance with Chapter 24, Article VII, Section 24-188(a)(l) of the City Code

An application for a special exception must go to the Planning Commission for a recommendation.

1. ☐ **A statement explaining in detail how the Special Exception is to be operated**, including hours of operation, number of anticipated employees, occupants and clientele, equipment involved and any special conditions or limitations which the petitioner proposes for the adoption by the Board of Appeals.
2. ☐ **Survey plats, siteplans or other accurate drawings** showing boundaries, dimensions, area, topography and frontage of the property involved, as well as the location and dimensions of all structures existing and proposed from the nearest property lines.
3. ☐ **Plans, architectural drawings, photographs, elevations, specifications** of other detailed information depicting fully the exterior appearance of the existing and proposed construction, including parking and access, exterior lighting, and signs involved in the petition.
4. ☐ **Plans showing conformance with City Environmental Standards for Development Regulation, Chapter 22 of the City Code, and additional landscape and lighting plan.**
5. ☐ **Copy of official zoning vicinity map** with a one-thousand-foot radius (circle) surrounding the subject property and other information to indicate the general conditions of use and existing improvements on adjoining and confronting properties. (Zoning map is available from the Planning and Code Administration).
6. ☐ **List of names and addresses of adjoining and confronting property owners or occupants** within two hundred feet of the subject parcel. If such property is a condominium, cooperative, or owned by a homeowners' association the petitioner must provide their current address and that of their resident agent. (Information can be researched in Planning and Code Administration.)
7. ☐ **The lease, rental agreement or contract to purchase by which the petitioner's legal right to prosecute the petition is established**, if the petitioner is not the owner of the property involved, or the authorized agent of the owner.
8. ☐ **Applicable Master Plan maps** reflecting proposed land use, zoning and transportation, together with any other portions of the applicable Master Plan deemed pertinent by the petitioner. (Available from the Planning and Code Administration).
9. ☐ **All additional exhibits** which the petitioner intends to introduce and/or the identification of exhibits intended to be introduced at the public hearing.
10. ☐ **A summary of what the petitioner expects to prove**, including the names of petitioner's witnesses, summaries of the testimony of expert witness, and the estimated time required for presentation of the applicant's case.
11. ☐ **All expert reports shall be filed at least fifteen (15) days prior to the public hearing.**
12. ☐ **A list of names and addresses of persons whom you wish to notified of the public hearing**, other than adjacent property owners.
13. ☐ **Required fee.**

CRITERIA

In accordance with Chapter 24, Article VII, Section 24-189(b) of the City Code

The Board of Appeals may grant a Special Exception if the proposed use:

- Is a permissible special exception within the zone and that the application therefor complies with all procedural requirements set forth in the article.
- Complies with standards and requirements specifically set forth for such use as may be contained in this chapter and the development standards for the zone within which the intended use will be located.
- Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will course no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity.
- Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses.
- Will be consistent with the Master Plan or other planning guides or capital programs for the physical development of the district.
- Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.
- Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements.
- When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

MISCELLANEOUS PAYMENT RECPT#: 38278
CITY OF GAITHERSBURG
31 SOUTH SUMMIT AVE.
GAITHERSBURG MD 20877-2098

DATE: 04/09/07 TIME: 13:02
CLERK: mfullert 1
CUSTOMER#:

PARCEL:

CHG: MISC OTHER MISCELLAN 4000.00

REVENUE:

1 100 441300 4000.00

ZONING/SUBDIVISION FEES

REF1: 415 RUSSEL REF2: L AVE

CASH:

001 101000 CASH-BANK OF

4000.00 PAID AMT

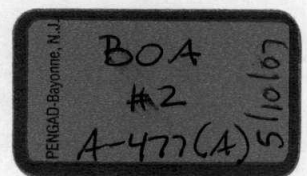
400 PAID BY NAME
CLEARWIRE PAY METHOD
CHECK

00062347

AMT TENDERED:

AMT APPLIED: 4000.00

CHANGE: 4000.00





Gaithersburg
A CHARACTER COUNTS! CITY

CITY OF GAITHERSBURG
31 SOUTH SUMMIT AVENUE, GAITHERSBURG, MARYLAND 20877
301-258-6330

RECEIPT

FROM

NAME

ADDRESS

FOR

00062347

TOTAL AMOUNT

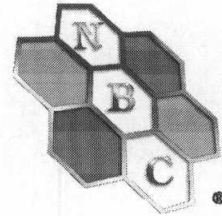
\$

DATE

BY

09/04

NETWORK BUILDING & CONSULTING, LLC



April 25, 2007

City of Gaithersburg
Planning & Code Administration
31 South Summit Avenue
Gaithersburg, MD 20877
ATTN: Caroline H. Seiden, Planner

RE: Clearwire US, LLC
MD-WSH010
415 Russell Ave.
Zone: R-90

Dear Ms. Seiden:

Pursuant to Sections 24-167A(D)(1) and 24-167A(D)(2) of the Gaithersburg Zoning Ordinance, Clearwire seeks a Special Exception from the Planning Commission and the Board of Zoning Appeals for the proposed telecommunications installation as described herein. The proposed installation is critical to Clearwire's goal of providing state-of-the-art coverage and capacity in the vicinity of the Russell Ave and Route 355.

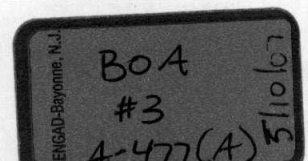
SITE HISTORY

Nextel Communications was approved for a special exception to mount twelve (12) rooftop antenna panels on the roof of 415 Russell Avenue, Gaithersburg, Maryland. The special exception was adopted unanimously by the Board of Appeals of the City of Gaithersburg on the May 14, 1998.

SITE DESCRIPTION

Clearwire proposes to install a rooftop telecommunications installation consisting of four (4) antennas flush-mounted on the rooftop of the 131-foot building at 415 Russell Ave. The antennas will not extend beyond the tops of the rooftop structures and will be painted to match the structures to which they are mounted. The associated radio equipment will be located within the penthouse of the building.

The flush-mounted antennas will not be visually distinct from existing rooftop telecommunications equipment. By locating our facilities on this existing structure, Clearwire's installation will have minimal visual impact on the surrounding area and will avoid the construction of new structures. Clearwire plans to use Stella Doradus SD9890 antenna measuring 36"x 6"x 5". The proposed equipment cabinet, which will contact communications equipment connecting the proposed antennas to the larger Clearwire network, will be placed within the penthouse of the building.



Clearwire will lease space from Ashbury Methodist Home, Inc. for the proposed site. A copy of the redacted lease agreement has been included for you records. Attached please find a statement signed by the Ashbury Methodist Home, Inc. allowing Clearwire to file for zoning approval for a telecommunications facility at this parcel.

The proposed site will operate continuously, but will not require any employees or occupants. The site will be maintained with monthly visits by Clearwire to ensure proper operation.

RADIO FREQUENCY NEED FOR PROPOSED SITE

Clearwire is seeking to expand its wireless broadband network into this market. The accompanying plots were prepared to show what the proposed network coverage would be with and without this site. The light green areas show the proposed coverage areas. As the accompanying plots show, Clearwire's service in the vicinity of site 10d is sporadic at best without the proposed site. The proposed site would alleviate this deficiency.

CONFORMANCE WITH ZONING ORDINANCE

We respectfully submit that the proposed site is in conformance with applicable provisions of the Gaithersburg Zoning Ordinance. Those provisions are as follows:

Sec. 24-167A. Satellite television antennas and towers, poles, antennas and/or other structures intended for use in connection with transmission or receipt of radio or television signals and/or telecommunications facilities.

(D) Telecommunications facilities.

1. Standards when allowed as permitted use. The following standards apply in those zones in which telecommunications facilities are allowed as a permitted use.

(a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least thirty (30) feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least thirty (30) feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling.

The building on which the proposed site will be located is at least 30 feet in height, and our antennas will be mounted well above 30 feet. The building on which the proposed site will be located is not a one-family residential dwelling.

An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than twenty-five (25) percent of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than twenty-five (25) percent of the roof area may be approved by the board of appeals as a special exception in accordance with subsection 2 of this section.

As shown on the attached drawings, the proposed equipment cabinet is being place inside the building's penthouse. As a result, the proposed site does not occupy more than twenty-five (25) percent of the roof area.

(b) Telecommunications antennas may be attached to a free standing monopole on privately owned land. A free-standing monopole including antenna structure for a telecommunications facility is permitted up to one hundred ninety-nine (199) feet in height with a set back of one foot for every foot of height from all adjoining residentially zoned properties, and a set back of one-half (1/2) foot for every foot of height from adjoining non-residential properties.

Clearwire respectfully submits that this subsection does not apply to our proposed rooftop facility.

(c) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed five hundred sixty (560) square feet and twelve (12) feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable set back standards of the zone in which the property is classified.

As described above, our cabinet is being placed inside of the building and does not exceed five hundred sixty (560) square feet or twelve (12) feet in height.

(d) Public property.

(i) A private telecommunications facility may be located on public property or attached to an existing structure owned or operated by the City of Gaithersburg and shall be a permitted use in all zones. The use of any property owned or operated by the city shall be at the discretion of the city council and shall not be subject to the same conditions and requirements as are applicable to such facilities on privately owned property. The city council may but is not required to hold a public hearing prior to its decision to allow the use of property owned or under the control of the city.

(ii) A private telecommunications facility may be located on public property of or attached to an existing structure owned or operated by a county, state, federal or other non-city governmental agency or on the property of an independent fire department or rescue squad subject to the same conditions and requirements as are applicable to such facilities on privately owned property.

Clearwire respectfully submits that this subsection does not apply to the proposed site on private property.

(e) All such antennas shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.

As shown in the enclosed drawings, the proposed antennas are located and designed so as to minimize visual impact on surrounding properties and from public streets.

(f) No signs are permitted in connection with any telecommunications facility.

(g) No lights are permitted on any monopole or antenna unless required by the federal communications commission, the federal aviation administration, or the city.

Clearwire will not attach any signs or lights to the proposed site.

(h) All monopoles erected as part of a telecommunications facility must maintain at least three (3) telecommunications carriers provided, however, that a monopole or other support structure designed or engineered to accommodate less than three (3) telecommunications carriers may be permitted by special exception when approved by the board of appeals.

(i) No more than one monopole is permitted on a lot or parcel of land and, no two (2) monopoles may be located within one thousand (1,000) feet of each other in any zone in which such facilities are permitted uses. In any such zone, more than one monopole may be permitted on a lot or parcel and two (2) or more monopoles may be located within one thousand (1,000) feet of each other by special exception approved by the board of appeals. A special exception to permit either the location of more than one monopole on a lot or parcel or two (2) or more monopoles within one thousand (1,000) feet of each other may only be approved by the board of appeals if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.

Clearwire respectfully submits that this subsection does not apply to our proposed rooftop facility.

(j) Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

Clearwire will remove any equipment buildings at its cost when the telecommunications facility is no longer in use.

2. Standards and requirements applicable to special exceptions for telecommunications facilities.

(a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:

(1) Complies with all of the standards contained in section 24-167A(D)1.

As described above, Clearwire submits that its proposed site complies with all standards contained in section 24-167A(D) 1.

(2) The location selected is necessary for the public convenience and service.

As discussed in the “Radio Frequency Need for the Proposed Site” above, Clearwire submits that the proposed site is necessary for coverage and capacity for the proposed network in the Gaithersburg area.

(3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.

Admittedly, the proposed site already houses the facilities of other wireless carriers. That said, the proposed co-location on an existing structure avoids the construction of a new tower, and does not lead to an “over-concentration” of freestanding structures.

(4) The location selected for a monopole is more than three hundred (300) feet from either the nearest boundary of a historic district or more than three hundred (300) feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.

(5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennas and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennas. The holder of a special exception may not refuse to permit the co-location of two (2) additional antennas and related equipment buildings or cabinets unless co-location is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.

Clearwire respectfully submits that this subsection does not apply to our proposed rooftop facility.

(6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least thirty (30) feet in height in any multifamily residential zone or non-residential zone; and fifty (50) feet in height in any one family residential zone. Rooftop telecommunications facilities may not be located on a one family residence.

The building on which the proposed site will be located is 131 feet in height and exceeds the minimum height requirements. The building on which the proposed site will be located is not a one-family residential dwelling.

(7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the board of appeals must find that it is to be located at a height at least thirty (30) feet on a building located in a multifamily residential zone or non-residential zone and at a height greater than fifty (50) feet in any one family residential zone. A telecommunications antenna must not be mounted on the facade of a one family residence.

Our antennas will be mounted well above 30 feet. The building on which the proposed site will be located is not a one-family residential dwelling.

(8) In any residential zone the board of appeals must find that the equipment building or cabinet does not exceed five hundred sixty (560) square feet and twelve (12) feet in height, and is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three (3) feet. The board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.

Clearwire respectfully submits that this subsection does not apply to the proposed site, the equipment is being placed within the building.

(9) The board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.

The proposed equipment cabinet is located within the existing building.

(10) The board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional ten (10) percent. The board must also find that the structure is not visually intrusive.

As described above, the proposed rooftop facility will not create the appearance of an additional story, and it will not increase the roof coverage by more than an additional ten (10) percent. We would also submit that the proposed rooftop equipment is not visually intrusive, especially in light of the existing telecommunications facilities already in place on this rooftop.

(11) The board must also find that a free-standing monopole or other support structure is proposed to hold no less than three (3) telecommunications carriers. The board may approve a monopole or other support structure with fewer than three (3) telecommunications carriers if the applicant establishes that: (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna; or (b) the applicant establishes that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.

(b) Area requirements.

(1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (c).

(2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.

(3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the perimeter property line.

(4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone, provided the board makes the additional finding

that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.

(c) Location requirements for structures. A monopole or other support structure must be located as follows:

(1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.

(2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half (1/2) foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.

Clearwire respectfully submits that this subsection does not apply to our proposed rooftop site.

(d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.

(e) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the federal communications commission, the federal aviation administration or the board.

(f) Removal of telecommunications facilities. Every free-standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

Due to the extensive and prolonged review by regulatory agencies of applications for licenses to operate commercial radio or television broadcasting stations, the establishment of such use may be initiated for up to five (5) years from the date of the decision of the city council, or from the date of a final decision of any appeal filed therefrom. Appeals may be filed to any decision of the city council under this subsection (C) of section 24-167A in the same manner as provided generally from appeals to decisions of the board of appeals under section 24-193 of this Code.

Clearwire will not attach any signs or lights to the proposed installation. We promise to remove all equipment associated with this facility at our cost when the facility is no longer in use.

In support of this application, attached please find the following supplemental materials:

- (a) Zoning map with circle showing approximate search area for this site;
- (b) Agency statement on Clearwire letterhead;
- (c) Zoning drawings;
- (d) Letter of authorization signed by property owner; and
- (e) Propagation maps showing site names.

If you have any questions or need further information, please contact me at (410) 712-7092 Ext. 1083. Thank you for your assistance with this submission.

Sincerely,

Adam R. Knubel
Zoning Manager

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland
(301) 258-6330

**BOARD OF APPEALS
RESOLUTION APPROVING**

AN APPLICATION REQUESTING A SPECIAL EXCEPTION TO ERECT
A TELECOMMUNICATIONS FACILITY CONSISTING OF TWELVE (12)
ANTENNA PANELS IN THE R-90 (MEDIUM DENSITY RESIDENTIAL)
ZONE AS ALLOWED BY SECTION 24-29(5) OF THE ZONING ORDINANCE
(CHAPTER 24 OF THE CITY OF GAITHERSBURG CODE), AT 415 RUSSELL
AVENUE, PARCEL D, ASBURY METHODIST VILLAGE, GAITHERSBURG,
MARYLAND.

A-477

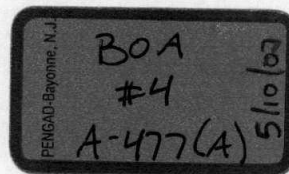
OPINION

This matter has come before the Board of Appeals as a special exception request for a telecommunications facility consisting of twelve (12) antenna panels on a roof of an existing building. The Board's authority in these matters is provided pursuant to Article 66B, Section 4.07, of the Annotated Code of the State of Maryland, and Section 24-187(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board "to hear and decide only those special exceptions as the Board of Appeals is specifically authorized to pass on by the terms of this Chapter." This case concerns a request for the approval of a telecommunications facility consisting of twelve (12) antenna panels on the roof of 415 Russell Avenue, Asbury Village, Gaithersburg, Maryland in the R-90 (Medium Density Residential) Zone (Tax Account 9-201-02890617).

Operative Facts

In 1998, the Mayor and City Council of Gaithersburg approved Ordinance O-21-98, which allows telecommunication facilities, subject to requirements, to be permitted by special exception [Section 24-29(5)] in the R-90 Zone. The purpose of a use by special exception is to allow the Board of Appeals to prescribe appropriate conditions and limitations on these uses.

The application and exhibits were filed by Jody Kline, Esquire on behalf of Nextel Communications of the Mid-Atlantic, Inc. and Asbury Methodist Village, Inc. on March 27, 1998. The application requested a special exception to mount twelve (12) rooftop antenna panels on the roof of 415 Russell Avenue, Gaithersburg, Maryland.



In accordance with Section 24-188(d), the Planning Commission reviewed the special exception request at their April 15, 1998, regularly scheduled meeting. Following testimony from Mr. Kline, the Planning Commission analyzed the subject request and recommended approval of the application to the Board of Appeals.

The public hearing was held by the Board of Appeals on Thursday, May 14, 1998, at 7:30 p.m. at City Hall. Notice of the public hearing was published in the April 15, 1998, issue of the *Gaithersburg Gazette*; the property was properly posted, and notice of public hearing was sent to the applicants and surrounding property owners on April 29, 1998.

The Board reviewed 28 exhibits, including the Applicant's summary of proof and statement, the lease agreement, the antenna location plan and specifications, propagation maps, the recommendation of the Planning Commission, photographs of the equipment superimposed on the building and a staff draft resolution of approval. Argument on behalf of the applicant was presented by Mr. Kline. Testimony was given by Ms. Linda Wong, a radio frequency engineer, concerning the operation of the telecommunications facility and its conformance to the standards for approval of the requested use. A letter was submitted from Lynn C. O'Conner, Executive Director, Asbury Methodist Village, Inc. verifying that the facilities would be removed when it is no longer in use. There was no testimony in opposition to the subject request. Following the testimony and arguments, the Board closed the record.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions which define the nature and extent a special exception which may be granted by this Board and the criteria upon which they may be approved.

* * *

DIVISION 2. R-90 ZONE. MEDIUM DENSITY RESIDENTIAL

* * *

Sec. 24-29 . Uses permitted by special exceptions.

* * *

- (5) Telecommunications facilities, subject to requirements of Section 24-167A(C)(2).

* * *

Section-24-167A. Satellite television antennas and towers, poles, antenna and /or other structures intended for use in connection with transmission or receipt of radio or television signals or a and telecommunications facilities.

* * *

(C) Telecommunications facilities.

1. Standards when allowed as permitted use:

The following standards apply in those zones in which telecommunications facilities are allowed as a permitted use.

- (a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least 30 feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least 30 feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than 25% of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than 25% of the roof area may be approved by the board of appeals as a special exception in accordance with Sub-section 2 of this Section.
- (b) Telecommunications antennas may be attached to a free standing monopole on privately owned land. A free standing monopole including antenna structure for a telecommunications facility is permitted up to 199 feet in height with a set back of one foot for every foot of height from all adjoining residentially zoned properties, and a set back of one-half foot for every foot of height from adjoining non-residential properties.
- (c) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed 560 square feet and 12 feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable set back standards of the zone in which the property is classified.

- (d) *Public Property.* A private telecommunication facility may be located on public property or attached to an existing structure owned or operated by the City, or by a county, state, federal or other governmental agencies subject to the same conditions and requirements as are applicable to such facilities on privately owned property. In addition, the use of any property owned by the City of Gaithersburg shall be at the discretion of the City Manager. A private telecommunications facility may be located on the property of an independent fire department or rescue squad subject to the same requirements as are applicable to private property.
- (e) All such antennas shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.
- (f) No signs are permitted in connection with any telecommunications facility.
- (g) No lights are permitted on any monopole or antenna unless required by the Federal Communications Commission, the Federal Aviation Administration, or the City.
- (h) All monopoles erected as part of a telecommunications facility must maintain at least three telecommunications carriers provided, however, that a monopole or other support structure designed or engineered to accommodate less than three telecommunications carriers may be permitted by special exception when approved by the Board of Appeals.
- (I) No more than one monopole is permitted on a lot or parcel of land and, no two monopoles may be located within 1000 feet of each other in any zone in which such facilities are permitted uses. In any such zones more than one monopole may be permitted on a lot or parcel and two or more monopoles may be located within 1,000 feet of each other by special exception approved by the Board of Appeals. A special exception to permit either the location of more than one monopole on a lot or parcel or two or more monopoles within 1,000 feet of each other may only be approved by the Board of Appeals if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.

- (j) Every free standing monopole or support structure and any unmanned equipment or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

2. Standards and requirements applicable to special exceptions for telecommunications facilities.

- (a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:
 - (1) Complies with all of the standards contained in Section 167A(C)1.
 - (2) The location selected is necessary for the public convenience and service.
 - (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.
 - (4) The location selected for a monopole is more than 300 feet from either the nearest boundary of a historic district or more than 300 feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.
 - (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennas and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennas. The holder of a special exception may not refuse to permit the co-location of two additional antennas and related equipment buildings or cabinets unless colocation is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.
 - (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least 30 feet in height in any multi-family residential zone or non-residential zone; and 50 feet in height in any one family residential zone. Rooftop telecommunications facility may not be located on a one family residence.

- (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the Board of Appeals must find that it is to be located at a height at least 30 feet on a building located in a multi-family residential zone or non-residential zone and at a height greater than fifty (50) feet in any one family residential zone. A telecommunications antenna must not be mounted on the facade of a one family residence.
- (8) In any residential zone the board of appeals must find that the equipment building or cabinet does not exceed 560 square feet and 12 feet in height, and is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three feet. The Board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.
- (9) The board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.
- (10) The board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional 10 percent. The board must also find that the structure is not visually intrusive.
- (11) The board must also find that a free standing monopole or other support structure is proposed to hold no less than three telecommunications carriers. The board may approve a monopole or other support structure with fewer than three telecommunications carriers if the applicant establishes that (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or (b) the applicant establishes that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.

(b) Area requirements.

- (1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (C).
- (2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.
- (3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the perimeter property line.
- (4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone, provided the board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.

(c) Location Requirements for structure. A monopole or other support structure must be located as follows:

- (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.
- (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.

(d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.

- (e) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the Federal Communications Commission, the Federal Aviation Administration or the board.
- (f) Removal of Telecommunications facilities. Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by the telecommunication carrier.

* * *

ARTICLE VII. Board of Appeals.

* * *

Sec. 24-187. Powers and duties.

The board of appeals shall have the following functions, powers, and duties:

* * *

(b) Special Exception. To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The board of appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the board shall be implemented in accordance with the terms and/or conditions set forth in the board's decision and shall include the requirement that the petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

The board of appeals shall prescribe a time limit within which the use for which the special exception is required shall be commenced or completed. Failure to begin or complete, or both, such action within the time limit set shall void the special exception unless otherwise extended by the board.

* * *

Sec. 24-189. Findings required.

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(b) Special exceptions. A special exception may be granted when the board of appeals finds from the evidence of record that the proposed use:

- (1) Is a permissible special exception within the zone and that the application therefor complies with all procedural requirements set forth in this article;
- (2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter;
- (3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;
- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;
- (5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;
- (6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;
- (7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and
- (8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

Findings and Conclusions

Based on the appellant's binding testimony and evidence of record, the Board finds that the application proposes to use rooftop camouflaged telecommunication antennae designed to blend with the materials and the colors of the structure. The location of the

antennae is within the R-90 (Medium Density Residential) Zone and is allowed by special exception as stated in Section 24-29(5) of the Zoning Ordinance (Chapter 24 of the City Code).

The applicant has shown that the building height of the multi-family structure of 415 Russell Avenue is approximately 99 feet, not including the penthouse, and the proposed use will not include rooftop equipment buildings or cabinets. The equipment, which is located in the building, will comply with the requirements of the statute. The unmanned equipment for these antennae is located within the building. The antennae will be mounted and painted in order to blend into the existing architecture of the building and to ensure compatibility with the exterior design and character of the building in order to camouflage the antennae. The propagation maps have shown that location selected will enhance the coverage for public convenience and service and fill a hole within the system of the provider.

The Board finds that the applicant has proved that the application is permissible by Section 24-29(5) and that it complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals. The applicant has shown compliance with the standards and requirements specifically set forth for telecommunication facilities in Sections 24-167A(C)(1) and (2) as discussed in the previous paragraph. The proposed use is consistent with the master plan of Neighborhood One in which this property is located.

The testimony of the applicant's representatives has shown that such use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable, vibrations, fumes, odors, dust, toxicity, glare or physical activity. The testimony has shown that the frequencies of the equipment are in the 806 to 821 MHZ range to receive and in the 851 to 866 MHZ range for transmitting. These frequencies will not interfere with other transmissions in the area. The transmit antennae will emit no more than 85 watts of effective radiation power per channel. The applicant has shown that this use will also not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

Because the proposed telecommunication facilities are to be blended into the materials and colors of the building which is 99 feet in height on an elevation which is approximately 20 feet above the street level of the adjoining streets, the applicant has shown that this application is in harmony with the general character of the neighborhood in relation to the design and scale of the antennae. This will also maintain the residential appearance of the building and not require additional landscaping, screening or fencing. Because the use will only require monthly maintenance checks consisting of one vehicle, this use will not impact the traffic or parking conditions within the neighborhood. The

existing multi-family building is already served by adequate public services and facilities and the proposed use will not increase the need for more services.

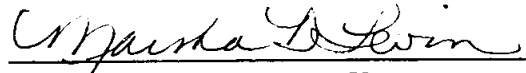
In conclusion, the Board of Appeals has found that the petitioner has submitted sufficient evidence and testimony for the approval of a telecommunications facility consisting of 12 antenna panels at 415 Russell Avenue, Asbury Methodist Village, Gaithersburg, Maryland. The applicant has shown compliance with Sections 24-167A(C)(1) and (2) and 24-189(b) subject to the following condition:

- 1) The equipment for this facility will be removed by Nextel if not used for a period of six (6) months.

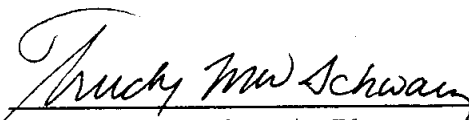
RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Board of Appeals of the City of Gaithersburg on the 14th day of May, 1998, that Case A-477, the petition of Jody S. Kline, Esquire for Nextel Communications of the Mid-Atlantic, requesting a special exception for a telecommunications facility in the R-90 (Medium Density Residential) Zone on the roof of 415 Russell Avenue, Gaithersburg, Maryland, be APPROVED with the conditions stated above in the Findings and Conclusions.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 14th day of May, 1998. Messrs. Kaye, Knoebel, Harris, and Levy, and Mrs. Levin being present and voting in favor of the action.


Marsha D. Levin, Vice-Chair
Board of Appeals

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in public meeting assembled, on the 14th day of May, 1998.


Trudy M.W. Schwarz, Planner
Chief Staff Liaison to the Board of Appeals

COMMUNICATION SITE LEASE AGREEMENT (BUILDING)

THIS COMMUNICATION SITE LEASE AGREEMENT ("Agreement") dated and is effective as of January 10, 2007, is between Clearwire US LLC, a Nevada limited liability company ("Clearwire" or "Tenant"), and Asbury Atlantic Inc. d/b/a Asbury Methodist Village. ("Owner" or "Landlord").

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** Landlord owns a parcel of land ("Land") and a building ("Building") located in the City of Gaithersburg, County of Montgomery, State of Maryland, commonly known as 415 Russell Avenue, Gaithersburg, Maryland, 20877 (APN: 02890617). The Building and the Land are collectively referred to herein as the "Property." The Land is more particularly described in Exhibit A annexed hereto. Subject to the provisions of Paragraph 2 below ("Effective Date/Due Diligence Period"), Owner hereby leases to Clearwire and Clearwire leases from Owner approximately forty nine (49) square feet of interior rooftop space, additional space adjacent to and/or on the roof of the Building and cable tray, conduit and riser space, and all other access and utility easements necessary or desirable therefore (collectively, "Premises") as may be described generally in Exhibit B annexed hereto.
2. **Effective Date/Due Diligence Period.** This Agreement shall be effective on the date of full execution hereof ("Effective Date"). Beginning on the Effective Date and continuing until the Term Commencement Date as defined in Paragraph 4 below ("Due Diligence Period"), Clearwire shall only be permitted to enter the Property for the limited purpose of making appropriate engineering and boundary surveys, inspections, and other reasonably necessary investigations and signal, topographical, geotechnical, structural and environmental tests (collectively, "Investigations and Tests") that Clearwire may deem necessary or desirable to determine the physical condition, feasibility and suitability of the Premises. In the event that Clearwire determines, during the Due Diligence Period, that the Premises are not appropriate for Clearwire's intended use, or if for any other reason, or no reason, Clearwire decides not to commence its tenancy of the Premises, then Clearwire shall have the right to terminate this Agreement without penalty upon written notice to Owner at any time during the Due Diligence Period and prior to the Term Commencement Date. Owner and Clearwire expressly acknowledge and agree that Clearwire's access to the Property during this Due Diligence Period shall be solely for the limited purpose of performing the Investigations and Tests, and that Clearwire shall not be considered an owner or operator of any portion of the Property, and shall have no ownership or control of any portion of the Property (except as expressly provided in this Paragraph 2), prior to the Term Commencement Date.
3. **Use.** The Premises may be used by Tenant for any lawful activity in connection with the provisions of wireless communications services, including without limitation, the transmission and the reception of radio communication signals and the construction, maintenance and operation of related communications facilities. Landlord agrees, at no expense to Landlord, to cooperate with Tenant, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Tenant's intended use of the Premises.
4. **Term.** The term of this Agreement shall commence upon the date Tenant begins construction of the Tenant Facilities (as defined in Paragraph 6 below) or eighteen (18) months following the Effective Date, whichever first occurs ("Term Commencement Date") and shall terminate on the fifth anniversary of the Term Commencement Date ("Term") unless otherwise terminated as provided herein. Tenant shall have the right to extend the Term for five (5) successive five (5) year periods ("Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each successive Renewal Term unless Tenant notifies Landlord of its intention not to renew at least thirty (30) days prior to commencement of the succeeding Renewal Term.
5. **Rent.** Within fifteen (15) business days following the Term Commencement Date and on the first day of each month thereafter, Tenant shall pay to Landlord as rent [REDACTED] per month ("Rent"). Rent for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated. Rent shall be increased on each anniversary of the Commencement Date by an amount equal to [REDACTED] of the Rent for the previous year. As additional consideration for signing this Agreement, Tenant shall pay to Landlord a signing bonus in the amount of [REDACTED]. This signing bonus shall be payable within thirty (30) business days after both Tenant and Landlord have executed and delivered this Agreement. Tenant shall only have the obligation to pay this signing bonus if Landlord has fully and properly executed this Agreement and delivered it to Tenant on or before January 19, 2006. Rent shall be payable to Landlord at 201 Russell Avenue, Gaithersburg, Maryland 20877; Attention: Director of Plant Operations. All of Tenant's monetary obligations set forth in this Agreement are conditioned upon Tenant's receipt of an accurate and executed W-9 Form from Landlord.
6. **Improvements.**
 - 6.1 Tenant has the right to construct, maintain, install, repair secure, replace, remove and operate on the Premises radio communications facilities, including but not limited to utility lines, transmission lines, an air conditioned equipment shelter(s) and/or an air conditioned equipment room in, adjacent to, or on the roof of, the Building, electronic equipment, transmitting and receiving antennas, microwave dishes, antennas and equipment, a power generator and generator pad, and supporting equipment and structures therefore ("Tenant Facilities"). In connection therewith, Tenant has the right to do all work necessary to prepare, add, maintain and alter the Premises for Tenant's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers. All of Tenant's construction and installation work shall be performed at Tenant's sole

cost and expense and in a good and workmanlike manner. Title to the Tenant Facilities and any equipment placed on the Premises by Tenant shall be held by Tenant or its lenders or assigns and are not fixtures. Tenant has the right to remove the Tenant Facilities at its sole expense on or before the expiration or earlier termination of this Agreement, and Tenant shall repair any damage to the Premises caused by such removal. Upon the expiration or earlier termination of this Agreement, Tenant shall remove the Tenant Facilities from the Property. If a roof warranty exists, Lessee shall conduct all roof work through Lessor roofing contractor and supervision, at Lessee expense, and performed all roof work in a manner that will ensure the continuation of such warranty. Lessee shall repair any damage to the roof caused by Lessee.

7. Access and Utilities.

7.1 Landlord shall provide Tenant, Tenant's employees, agents, contractors, subcontractors and assigns with access to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Tenant. Landlord grants to Tenant, and Tenant's agents, employees and contractors, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across the Property, and such right and easement may be described generally in Exhibit B.

7.2 Landlord shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Landlord shall be responsible for maintaining and repairing such roadways, at its sole expense, except for any damage caused by Tenant's use of such roadways.

7.3 In consideration of the Rent, Landlord shall provide 40 amps of electrical service to Tenant at no charge to Tenant through Landlord owned facilities. Tenant shall install a sub-meter and pay for the electricity it consumes in its operations at the rate charged by the servicing utility company.

8. Interference. Tenant shall operate the Tenant Facilities in compliance with all Federal Communications Commission ("FCC") requirements including those prohibiting interference to communications facilities of Landlord or other lessees or licensees of the Property, provided that the installation and operation of any such facilities predate the installation of the Tenant Facilities. Subsequent to the installation of the Tenant Facilities, Landlord will not, and will not permit its lessees or licensees to, install new equipment on or make any alterations to the Property or property contiguous thereto owned or controlled by Landlord, if such modifications are likely to cause interference with Tenant's operations. In the event interference occurs, Landlord agrees to use best efforts to eliminate such interference in a reasonable time period. Landlord's failure to comply with this paragraph shall be a material breach of this Agreement.

9. Taxes. Tenant shall pay personal property taxes assessed against the Tenant Facilities and Landlord shall pay when due, all real property taxes and all other taxes, fees and assessments attributable to the Premises or this Agreement.

10. Termination.

10.1 This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, except that this Agreement shall not be terminated if the default cannot reasonably be cured within such sixty (60) day period and the defaulting party has commenced to cure the default within such sixty (60) day period and diligently pursues the cure to completion; provided that the grace period for any monetary default is ten (10) days from receipt of written notice. This Agreement may be terminated by Tenant without further liability for any reason or for no reason, provided Tenant delivers written notice of termination to Landlord prior to the Commencement Date.

10.2 This Agreement may also be terminated by Tenant without further liability on thirty (30) days prior written notice (i) if Tenant is unable to reasonably obtain or maintain any certificate, license, permit, authority or approval from any governmental authority, thus, restricting Tenant from installing, removing, replacing, maintaining or operating the Tenant Facilities or using the Premises in the manner intended by Tenant; (ii) if Tenant determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including without limitation, signal strength, coverage or interference, or (iii) or Tenant otherwise determines, within its sole discretion, that it will be unable to use the Premises for Tenant's intended purpose.

11. Destruction or Condemnation. If the Premises or Tenant Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, Tenant may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Landlord no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If Tenant chooses not to terminate this Agreement, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

12. Insurance; Subrogation; and Indemnity.

12.1 Tenant shall provide Commercial General Liability Insurance in an aggregate amount of [REDACTED] Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain.

12.2 Landlord, at Landlord's sole cost and expense, shall procure and maintain CGL insurance covering bodily injury and property damage with a combined single limit of at least [REDACTED]

er occurrence. Such insurance shall insure, on an occurrence basis, against all liability of Landlord, its employees and agents arising out of or in connection with Landlord's use, occupancy and maintenance of the Property. Within thirty (30) days following the Effective Date, Landlord shall provide Tenant with a COI evidencing the coverage required by this Section.

12.3 Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first-party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

12.4 Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) (collectively "Losses") arising from the indemnifying party's breach of any term or condition of this Agreement or from the negligence or willful misconduct of the indemnifying party or its agents, employees or contractors in or about the Property. The duties described in this Paragraph 12.3 shall apply as of the Effective Date of this Agreement and survive the termination of this Agreement.

13. Assignment. Tenant may assign this Agreement at any time with notice to be provided to Landlord as soon thereafter as reasonably possible.

14. Title and Quiet Enjoyment

14.1 Landlord represents and warrants that (i) it has full right, power, and authority to execute this Agreement, (ii) Tenant may peacefully and quietly enjoy the Premises and such access thereto, provided that Tenant is not in default hereunder after notice and expiration of all cure periods, (iii) it has obtained all necessary approvals and consents, and has taken all necessary action to enable Landlord to enter into this Agreement and allow Tenant to install and operate the Facility on the Premises, including without limitation, approvals and consents as may be necessary from other tenants, licensees and occupants of Landlord's Property, and (iv) the Property and access rights are free and clear of all liens, encumbrances and restrictions except those of record as of the Effective Date.

14.2 Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Tenant, such title report shows any defects of title or any liens or encumbrances which may adversely affect Tenant's use of the Premises, Tenant shall have the right to terminate this Agreement immediately upon written notice to Landlord.

15. Environmental. As of the Effective Date of this Agreement: (1) Tenant hereby represents and warrants that it shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Property in violation of any applicable law or regulation, and (2) Landlord hereby represents and warrants that (i) it has no knowledge of the presence of any Hazardous Material located in, on, under, upon or affecting the Property in violation of any applicable law or regulation; (ii) no notice has been received by or on behalf of Landlord from any governmental entity or any person or entity claiming any violation of any applicable environmental law or regulation in, on, under, upon or affecting the Property; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon, or affecting the Property in violation of any applicable law or regulation. Without limiting Paragraph 12.3, Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against all Losses (specifically including, without limitation, attorneys', engineers', consultants' and experts' fees, costs and expenses) arising from (i) any breach of any representation or warranty made in this Paragraph 15 by such party; and/or (ii) environmental conditions or noncompliance with any applicable law or regulation that result, in the case of Tenant, from operations in or about the Property by Tenant or Tenant's agents, employees or contractors, and in the case of Landlord, from the ownership or control of, or operations in or about, the Property by Landlord or Landlord's predecessors in interest, and their respective agents, employees, contractors, tenants, guests or other parties. The provisions of this Paragraph 15 shall apply as of the Effective Date of this Agreement and survive termination of this Agreement. "Hazardous Material" means any solid, gaseous or liquid wastes (including hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import, as such terms are defined in any applicable environmental law or regulation, and shall include, without limitation, any petroleum or petroleum products or by-products, flammable explosives, radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any applicable environmental law or regulation.

16. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise concerning the Tenant Facilities or any portion thereof which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent.

17. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by for next-business-day delivery by a nationally recognized overnight carrier to the following addresses

If to Tenant, to:	With a copy to:	If to Landlord, to:
Clearwire US LLC Attn: Site Property Manager 5808 Lake Washington Blvd NE, Suite 300 Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900	Clearwire US LLC Attention: Legal Department 5808 Lake Washington Blvd NE, Suite 300 Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900	Asbury Atlantic Inc. d/b/a Asbury Methodist Village Attn: Director of Plant Operations 201 Russell Avenue, Gaithersburg, MD 20877 Telephone: 301-216-4064 Fax: 301-216-5749

Landlord or Tenant may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or refusal to accept delivery.

18. Miscellaneous.

18.1 If Tenant is to pay Rent to a payee other than the Landlord, Landlord shall notify Tenant in advance in writing of the payee's name and address.

18.2 The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

18.3 If any provision of the Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18.4 Terms and conditions of this Agreement which by their sense and context survive the termination, cancellation or expiration of this Agreement will so survive.

18.5 This Agreement shall be governed under law of the State in which the Premises are located, and be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

18.6 A Memorandum of Agreement in the form attached hereto as Exhibit C may be recorded by Tenant confirming the (i) effectiveness of this agreement, (ii) expiration date of the Term, (iii) the duration of any Renewal Terms, and/or other reasonable terms consistent with this Agreement.

18.7 All Exhibits referred herein are incorporated herein for all purposes.

18.8 Landlord shall make a diligent and good faith effort to obtain a Nondisturbance Agreement for the benefit of Tenant from each lender with a security interest recorded upon the title to the Site at the time of execution of this Agreement.

18.9 This Agreement constitutes the entire Agreement between the parties, and supersedes all understandings, offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Agreement must be in writing and executed by both parties.

18.10 Landlord agrees not to disclose, without the written consent of Tenant, any of the terms of this Agreement or any other written agreement between the parties relating to the privileges granted herein, except as required by governmental authority, in which case Landlord shall inform Tenant prior to divulging such information.

19. Subordination. This lease agreement shall be subject and subordinate at times to the lien of any mortgage or deed of trust, which may now or which may at any time hereafter be made a lien upon the building of which the Premises are a part or upon Landlord's interest therein. Tenant hereby appoints Landlord as its attorney-in-fact for the sole purpose of executing any instrument acknowledging the subordination of this lease agreement to any such mortgage or deed of trust. In the event that the instrument may contain terms that obligate Tenant in any way other than mere subordination of the lease, Landlord will forward a copy of the instrument to Tenant as soon as commercially possible.

IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date first above written.

LANDLORD:

Asbury Atlantic, Inc. d/b/a Asbury Methodist Village

By: 

Name: DAVID DENTON


Title: EXECUTIVE DIRECTOR

Date: 1/9/07

Tax I.D.: 52-0607956

TENANT:

Clearwire US LLC, a Nevada limited liability company

By: 

Name: John A. Clark

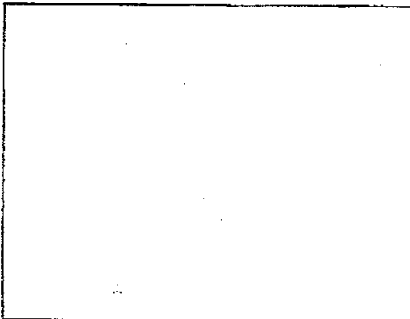
Title: Vice President - Network Deployment

Date: 1.20.07

[Notary block for a Corporation]

STATE OF Maryland)
) ss.
COUNTY OF Montgomery)

I certify that I know or have satisfactory evidence that David Denton is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Executive Director of Asbury Methodist Village, a not-for-profit corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.
Dated: 1/10/07



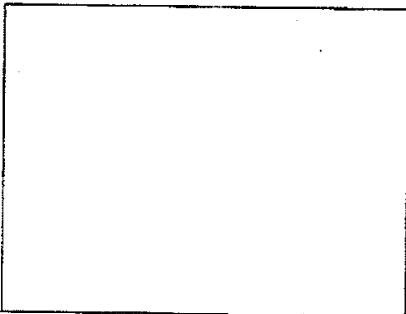
(Use this space for notary stamp/seal)

[Notary block for an individual]

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____



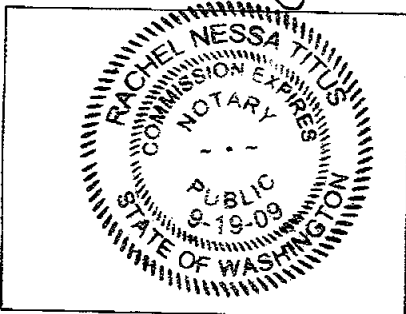
(Use this space for notary stamp/seal)

[Notary block for Licensee]

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that John A. Storch is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the VP Network Deployment of Clearwire US LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: January 20, 2007



(Use this space for notary stamp/seal)

Notary Public
Print Name Rachel Nessa Titus
My commission expires 9/19/09



5808 Lake Washington Blvd. NE
Suite 300
Kirkland, WA 98033

PHONE:
425.216.7600

FAX:
425.216.7900

ONLINE:
www.clearwire.com

February 2, 2007

Re: Clearwire LLC- Leasing, Zoning and Permitting Authorization

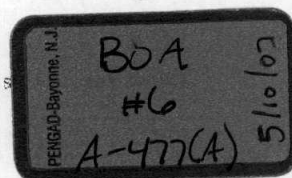
To whom it may concern,

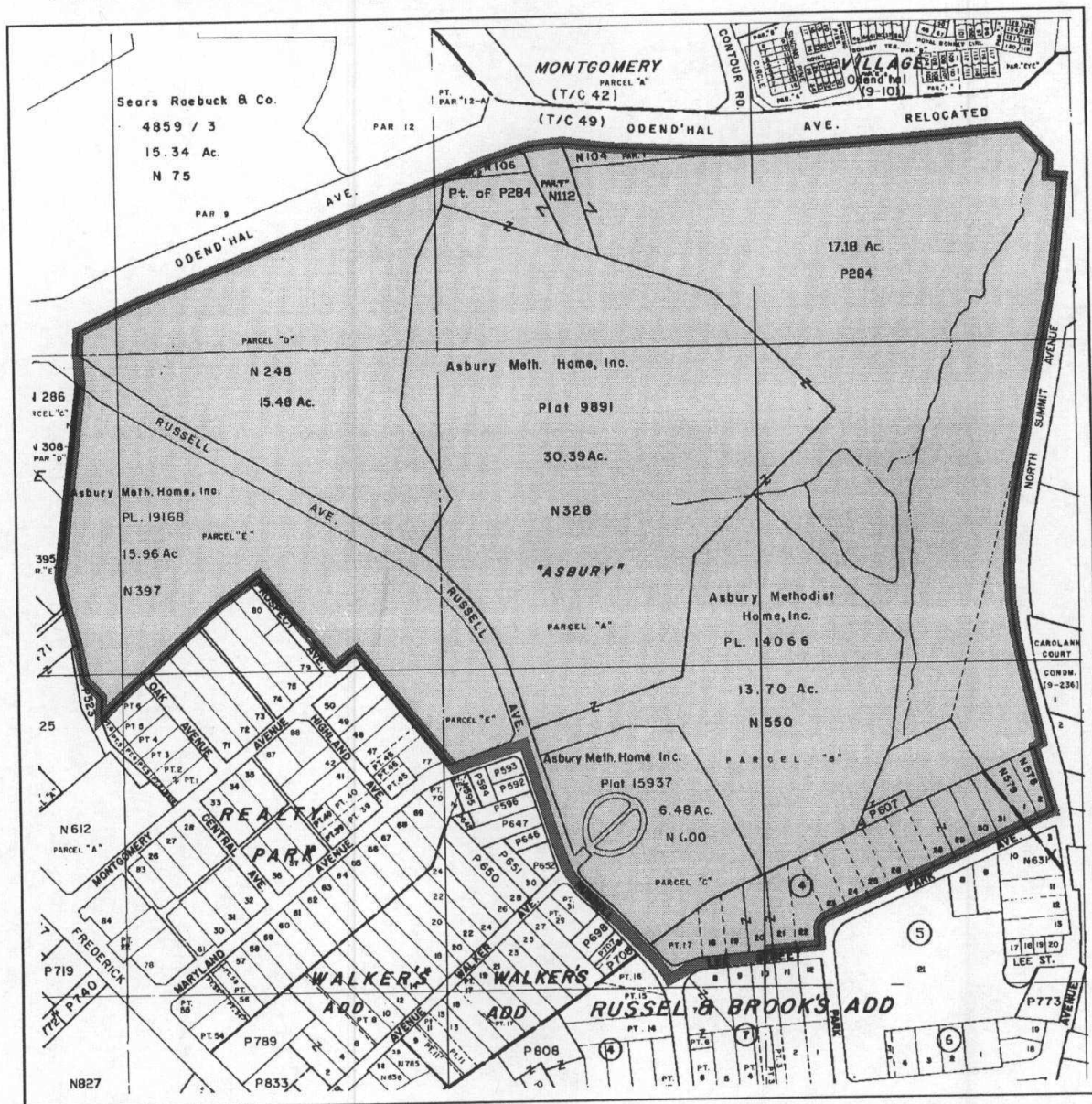
Please be advised that Network Building and Consulting ("NBC") is performing work for Clearwire US LLC ("Clearwire") in the Washington DC and Virginia markets. Clearwire hereby authorizes NBC to act on behalf of Clearwire for the sole purpose of leasing and acquiring zoning and permit approvals to ensure Clearwire's ability to construct and operate its broadband services network. This authorization shall not be construed as a commitment of any type, and all final terms will be subject to Clearwire's approval.

Sincerely,
CLEARWIRE US LLC

Name: Eamon O'Leary

Title: VP Engineering





A building master plan has received concept approval from the City Planning Commission which includes seven development areas on 115 acres with a total build-out number of 3,083 units. The existing Asbury Villas, located on Parcel E (16 acres) is located across Russell Avenue from the main campus of Asbury and

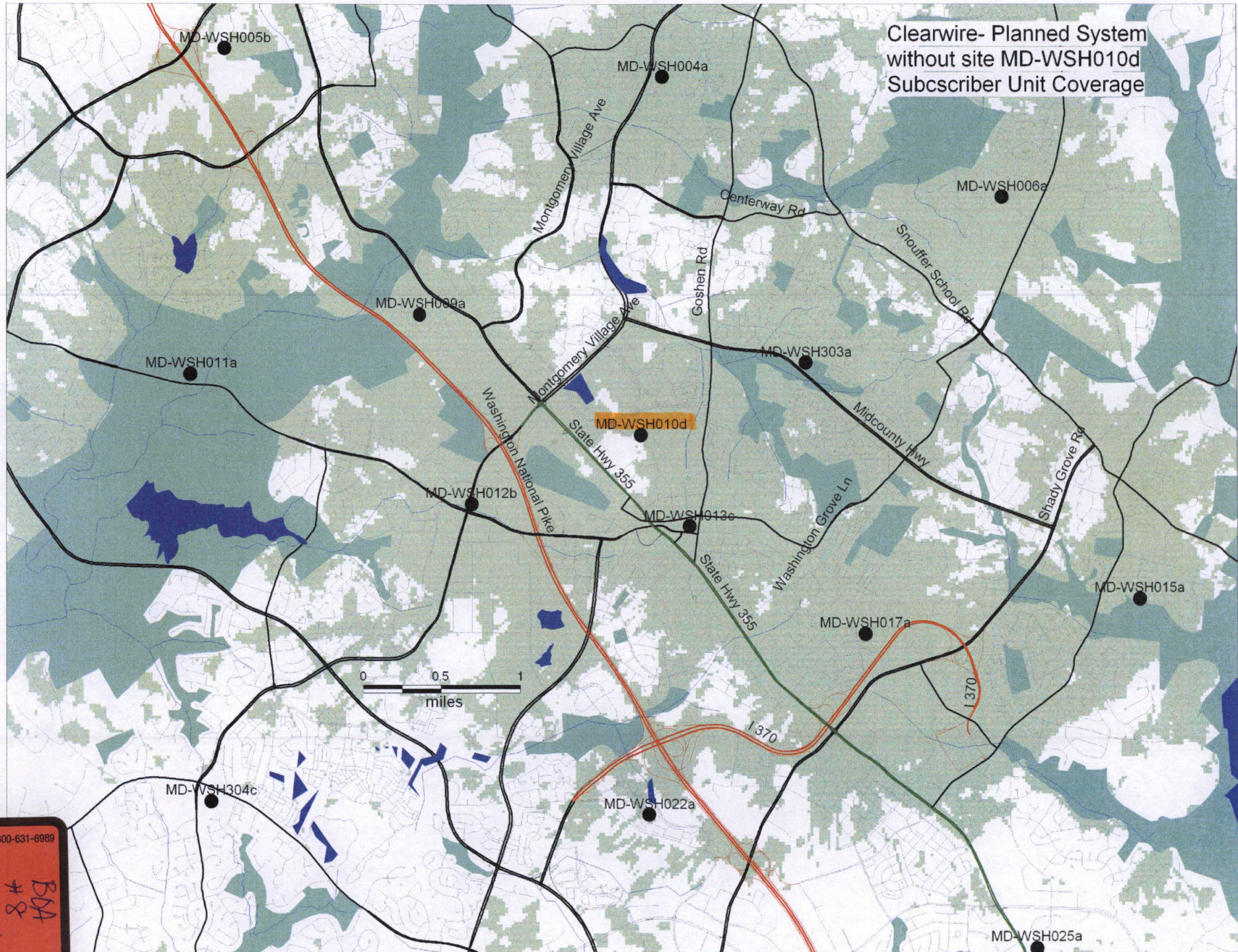
consists of 73 independent living units. The land use designation of mixed residential and corresponding zoning category of R-90 will allow the Asbury Methodist Village to grow in line with its proposed master plan.

Road improvements are planned for Russell Avenue to calm traffic. In addition to the traffic calming plan, there are two planned hiker-biker trails that will affect the Asbury property. A hiker-biker trail is planned along the west side of Goshen Road as part of the City's master plan of trails, and future dedication may be required for this facility. If the trail is constructed, the large tree stands along Goshen Road should be preserved. Another hiker-biker trail is planned along Russell Avenue. A portion of this trail is expected to be constructed by the City of Gaithersburg on the north side of Russell Avenue between Montgomery Avenue and Lee Street. The remaining portion of this planned facility will run on the north side of Russell Avenue between Montgomery Avenue and Odendhal Avenue.

Land Use and Zoning Actions:

- Adopt Mixed Residential land use designation
- Zoning remains R-90

Clearwire- Planned System
without site MD-WSH010d
Subscriber Unit Coverage

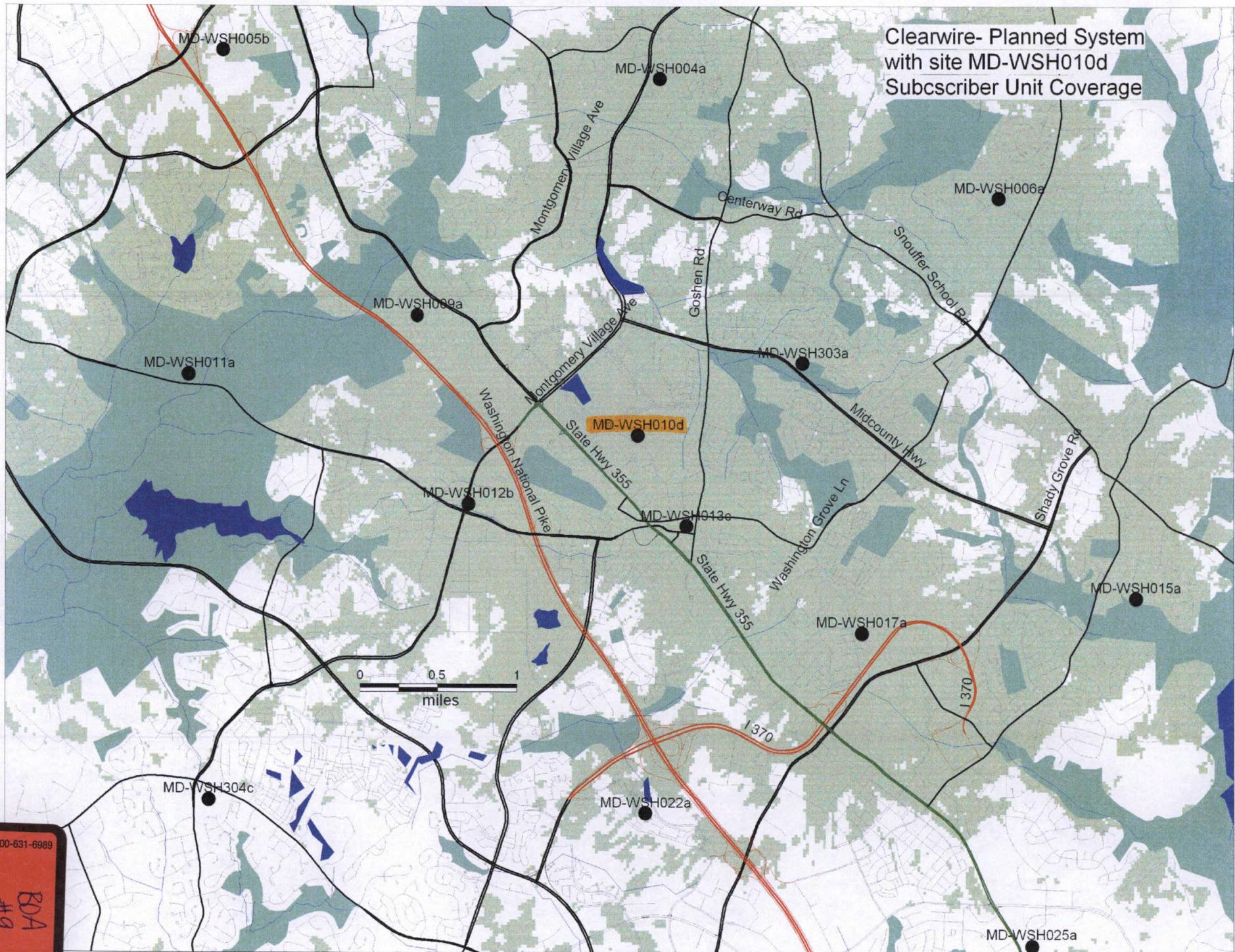


PENGAD 800-631-6989

A-477(A)
B04
#8

5/10/07

Clearwire- Planned System
with site MD-WSH010d
Subscriber Unit Coverage



SITE INFORMATION

OWNER: ASHBURY METHODIST HOME, INC.
417 RUSSELL AVENUE
GAITHERSBURG, MD 10879

APPLICANT: CLEARWIRE US, LLC.
5808 LAKE WASHINGTON BLVD. SUITE 300
KIRKLAND, WA 98033

SITE ADDRESS: 415 RUSSELL AVENUE
GAITHERSBURG, MD 20877

COUNTY: MONTGOMERY
LATITUDE: 39° 8' 58.49" N (NAD 83)
LONGITUDE: 77° 12' 1.04" W (NAD 83)
GROUND ELEVATION: 470' ± AMSL
ZONING JURISDICTION: CITY OF GAITHERSBURG, MARYLAND
ZONING CLASSIFICATION: R-90
AREA OF CONSTRUCTION: ±49 s.f.
PROPOSED USE: WIRELESS BROADBAND FACILITY
MAP/PARCEL: FT42/N248

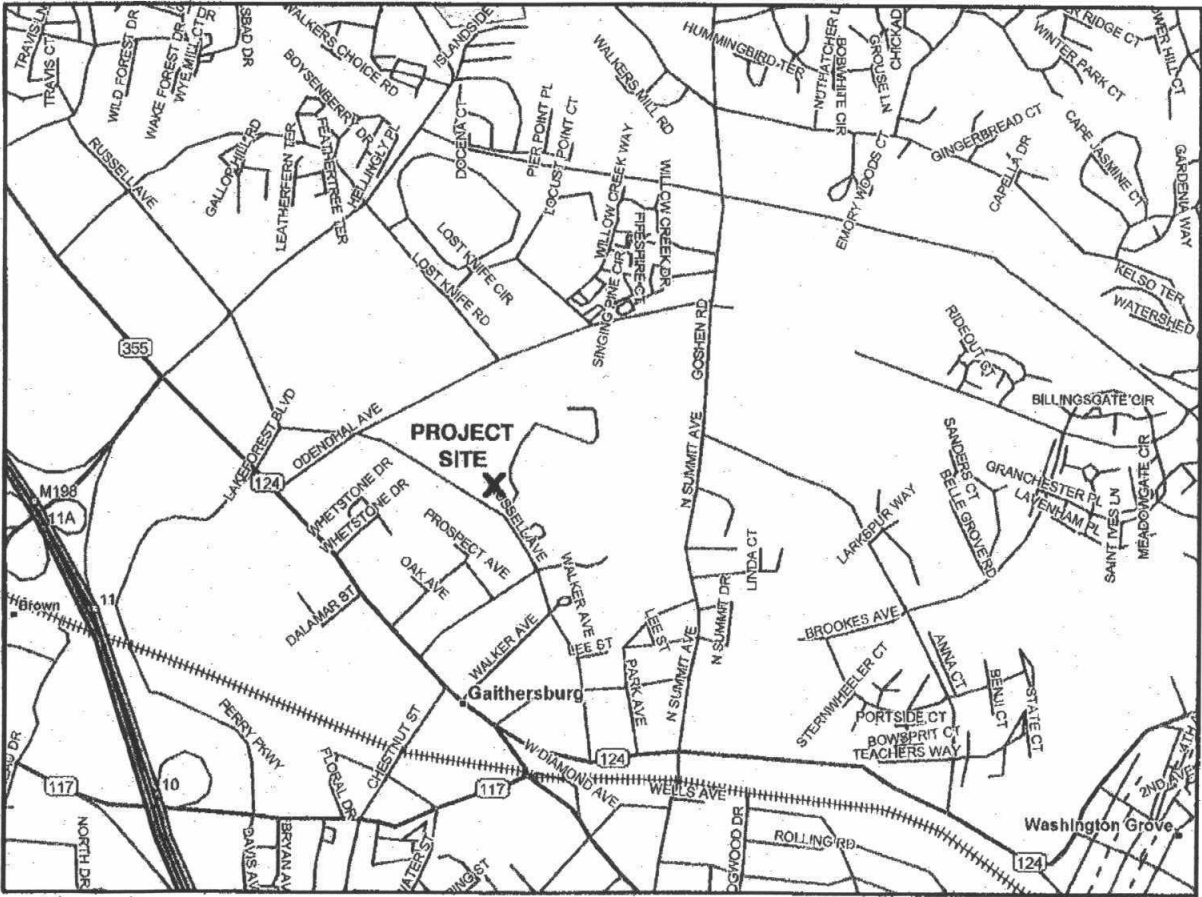
ENGINEER: C&S ENGINEERS INC.
499 COL. EILEEN COLLINS BLVD.
SYRACUSE, NY 13212

CONTACT: ROBERT N. DUCLOS, P.E.
PHONE: (315) 455-2000

clearwire
wireless broadband

SITE NAME: 415 RUSSELL AVENUE
SITE NUMBER: MD-WSH010
ZONING DRAWINGS

LOCATION MAP



304
#14
A-477(A) 5/10/07

DRAWING INDEX

REV

- 01 TITLE SHEET
- 02 ROOF PLAN
- 03 PARTIAL PLANS
- 04 BUILDING ELEVATION

3
3
3
3



499 Col. Eileen Collins Blvd.
Syracuse, New York 13212
Phone 315-455-2000
Fax 315-455-9667
www.cscos.com

SITE NAME: 415 RUSSELL AVENUE
SITE NUMBER: MD-WSH010
415 RUSSELL AVENUE
GAITHERSBURG, MD 20877

clearwire
wireless broadband

NO.	DATE	REVISIONS	BY	CHK	APP'D
02-21-07		TAX PARCEL INFO	REM	ENK	RND
02-09-07		ANTENNAS	MFL	ENK	RND
10-18-06		ANTENNA LOCATIONS	MFL	ENK	RND
01					

SCALE: AS SHOWN DESIGNED BY: DRAWN BY:

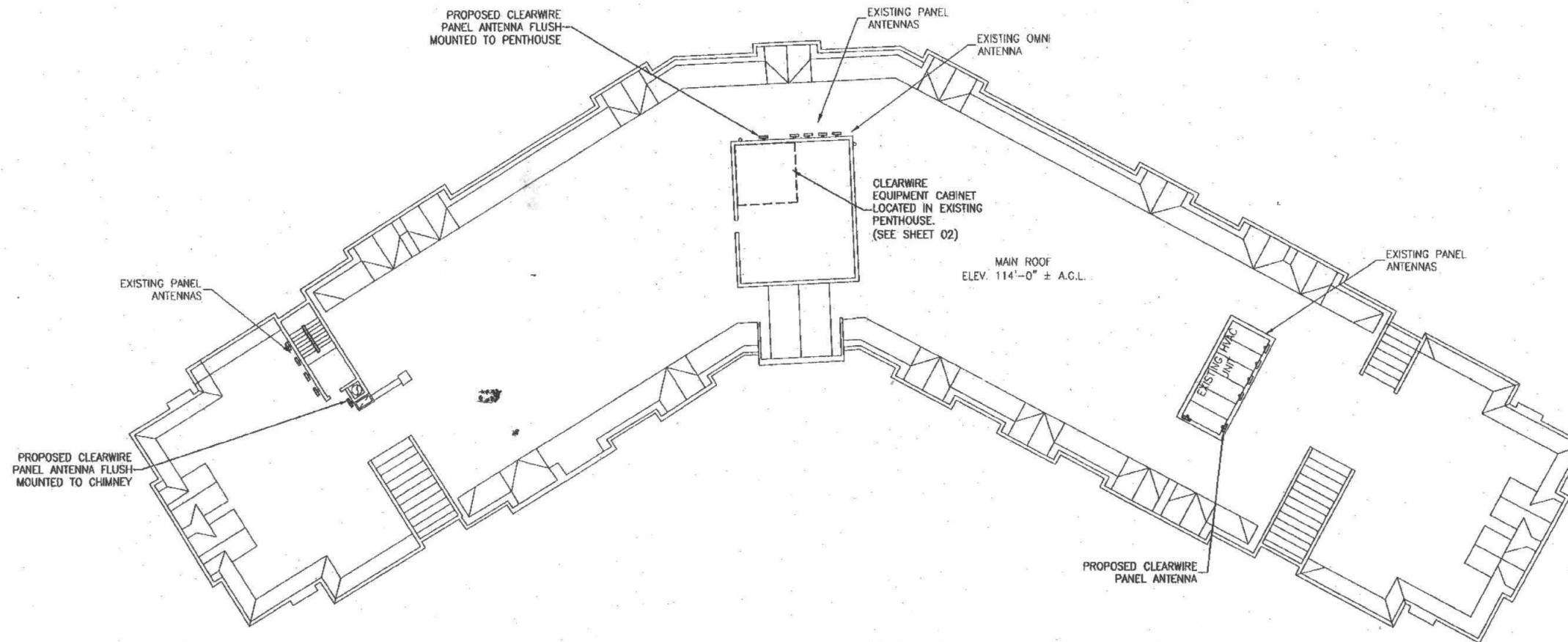


CLEARWIRE

TITLE SHEET

DRAWING NUMBER: 01
REV: 3

11 x 17" 8" SIZE



- NOTE:**
1. CLEARWIRE ANTENNAS TO BE PAINTED TO MATCH EXISTING BUILDING.
 2. ALL MOUNTING TO BE DONE USING ADHESIVE ANCHORS



ROOF PLAN
SCALE: 1"=16'-0"

BOA
#15
A-47(A)
5/10/07

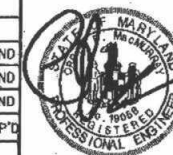


499 Col. Eileen Collins Blvd.
Syracuse, New York 13212
Phone 315-455-2000
Fax 315-455-9667
www.csoos.com

SITE NAME: 415 RUSSELL AVENUE
SITE NUMBER: MD-WSH010
415 RUSSELL AVENUE
GAITHERSBURG, MD 20877

clearw're
wireless broadband

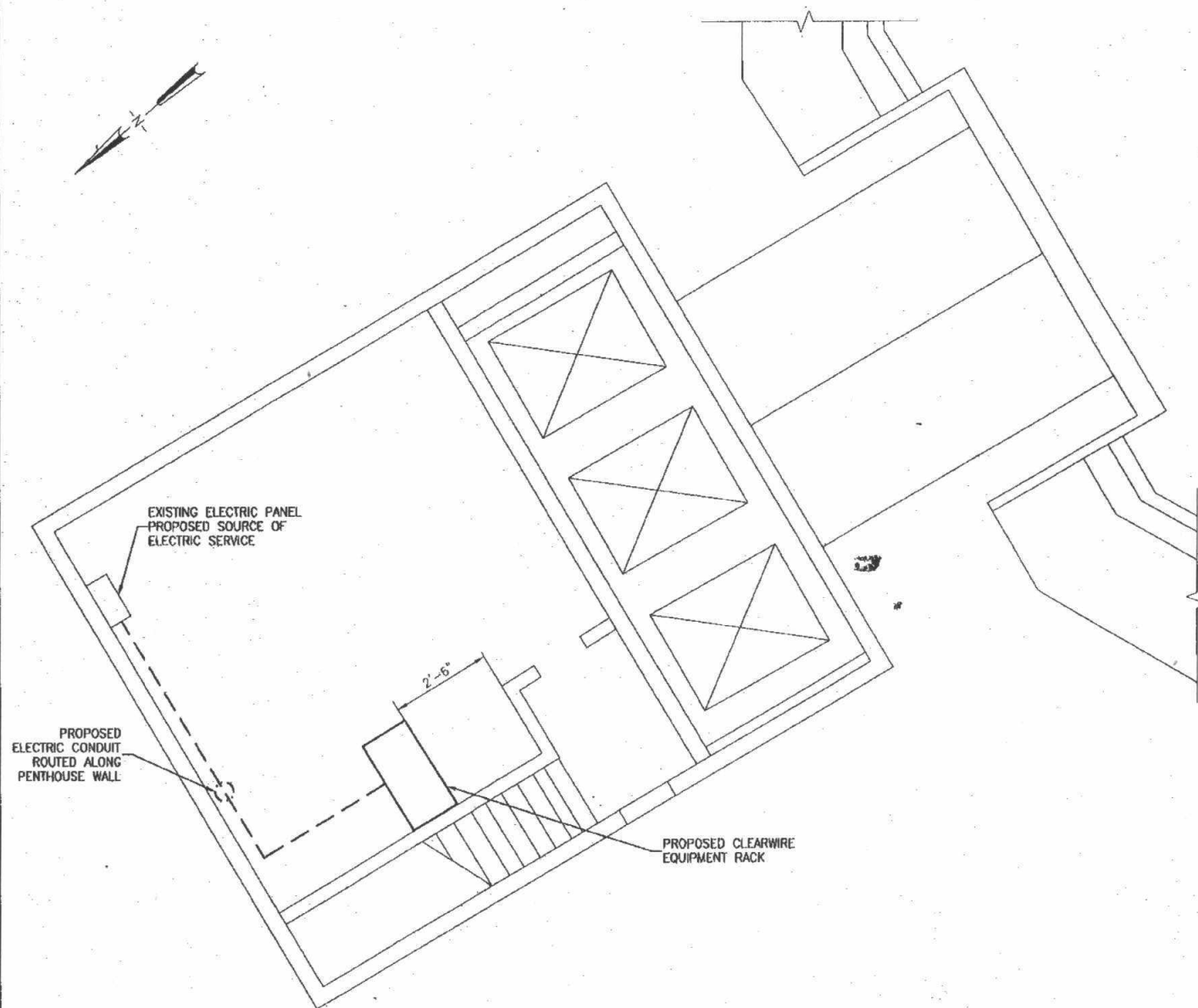
NO.	DATE	REVISIONS	BY	CHK	APP'D
02-21-07		TAX PARCEL INFO	REM	ENK	RND
02-09-07		ANTENNAS	MFL	ENK	RND
10-19-06		ANTENNA LOCATIONS	MFL	ENK	RND
SCALE:	AS SHOWN	DESIGNED BY:	DRAWN BY:		



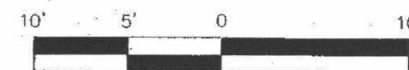
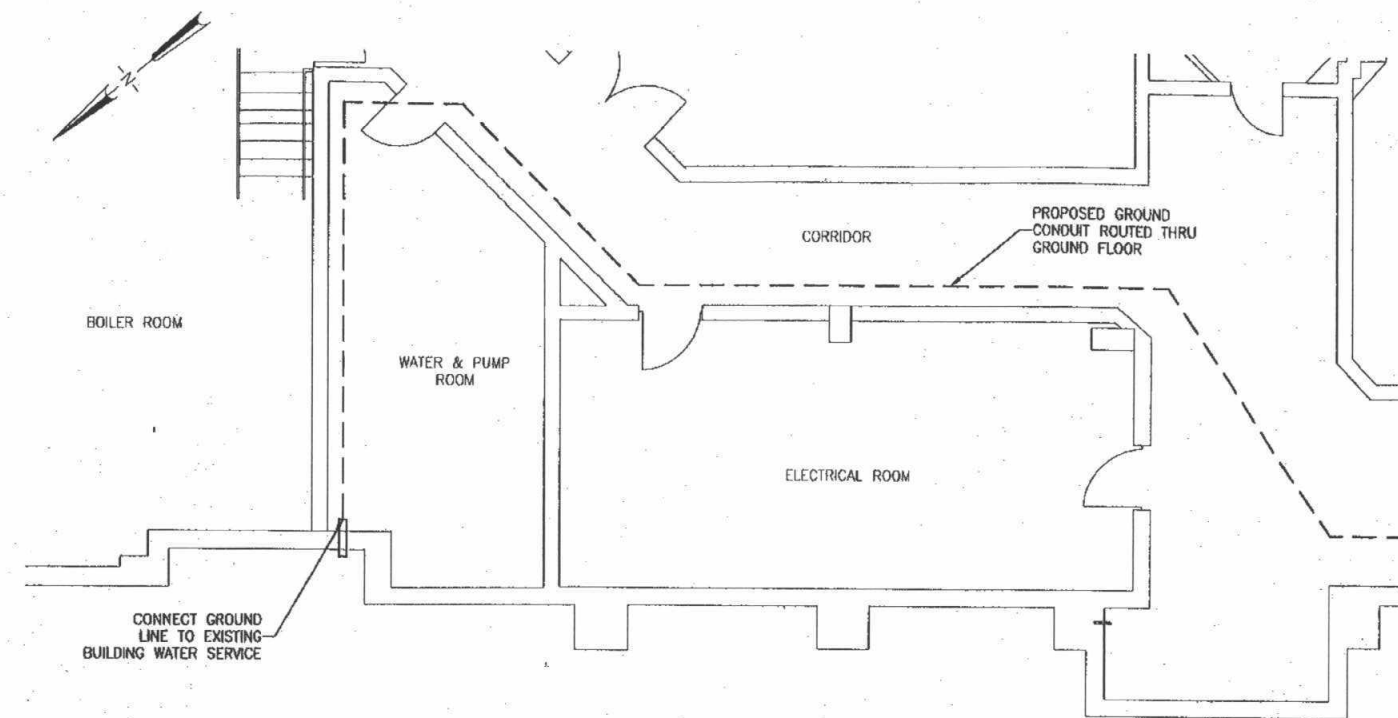
CLEARWIRE	
ROOF PLAN	
DRAWING NUMBER	REV
02	3

11 x 17" B SIZE

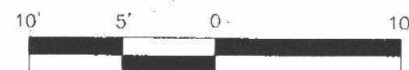
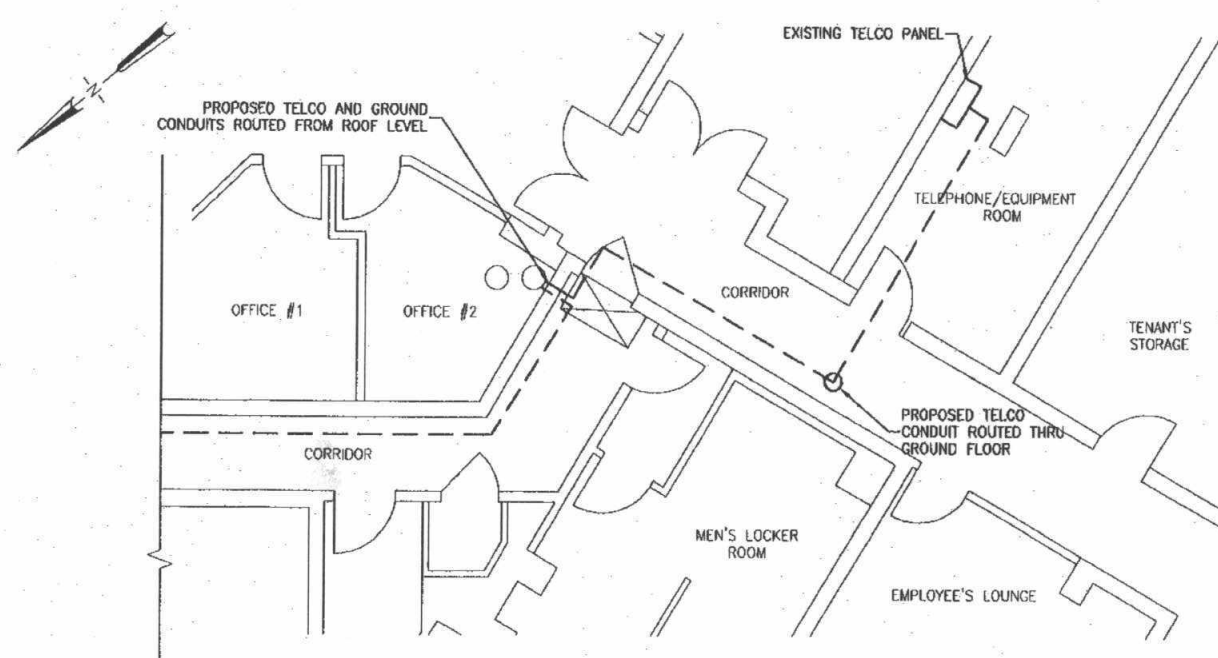
Feb 21, 2007 - 3:02pm
F:\Project\45001-CLEARWIRE\Cadd\WSH010\Zoning\03.dwg



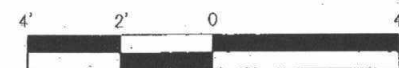
ENLARGED PENTHOUSE PLAN
SCALE: 1/4"=1'-0"



PARTIAL GROUND FLOOR PLAN (WEST END)
SCALE: 1"=10'-0"



PARTIAL GROUND FLOOR PLAN (MIDDLE OF BUILDING)
SCALE: 1"=10'-0"

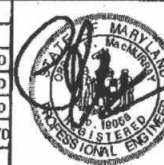


499 Col. Eileen Collins Blvd.
Syracuse, New York 13212
Phone 315-455-2000
Fax 315-455-9667
www.cscos.com

SITE NAME: 415 RUSSELL AVENUE
SITE NUMBER: MD-WSH010
415 RUSSELL AVENUE
GAITHERSBURG, MD 20877

clearw're
wireless broadband

NO.	DATE	REVISIONS	BY	CHK	APP'D
02-21-07		TAX PARCEL INFO	REM	ENK	RND
02-08-07		ANTENNAS	MFL	ENK	RND
10-18-06		ANTENNA LOCATIONS	MFL	ENK	RND
SCALE:	AS SHOWN	DESIGNED BY:		DRAWN BY:	



CLEARWIRE

PARTIAL PLANS

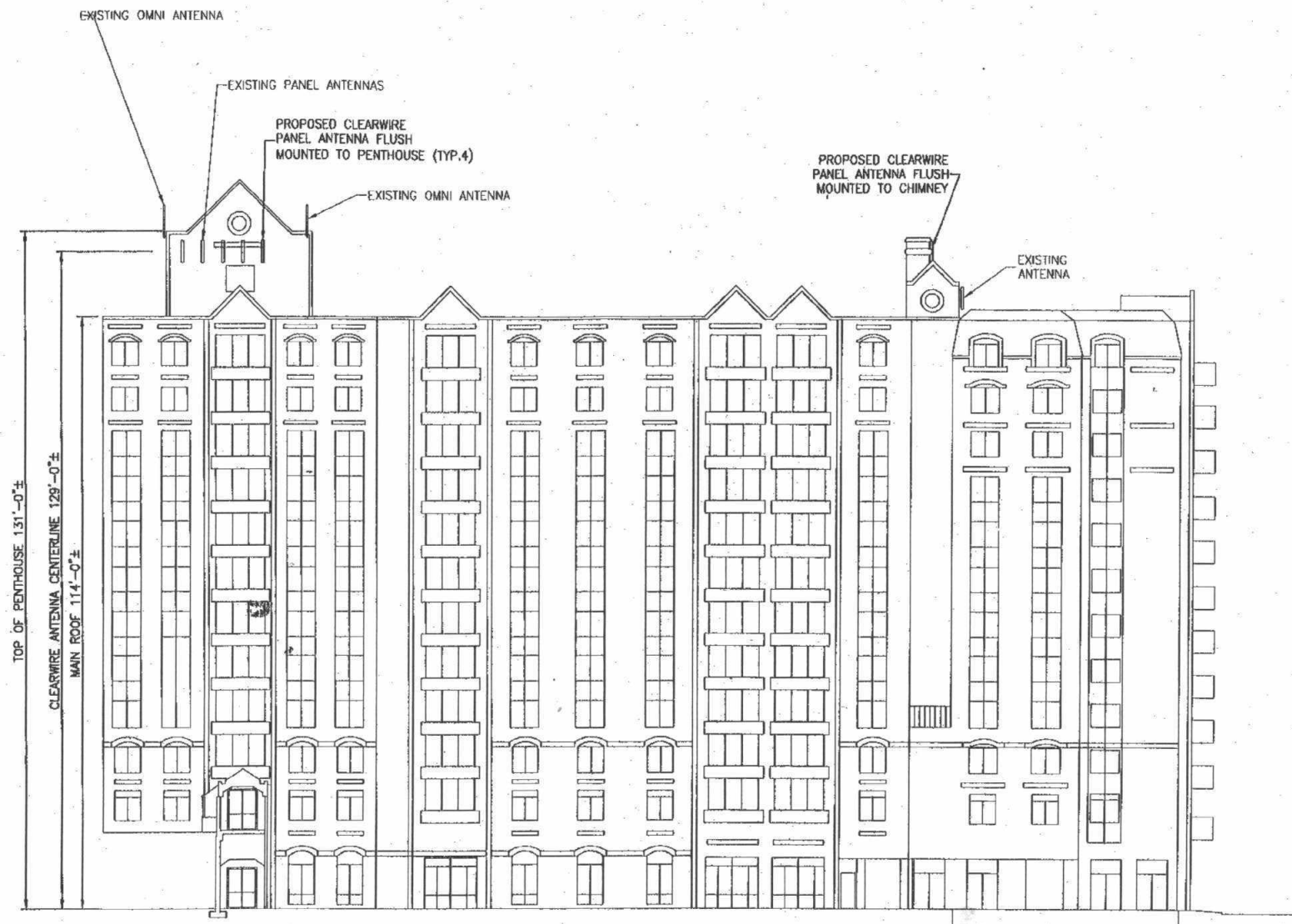
DRAWING NUMBER
03

REV
3

20A
#16
A-477(A)
5/10/07

11 x 17 - 8" SIZE

Feb 21, 2007 3:15pm
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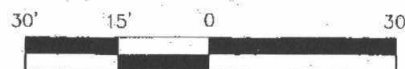


NORTH ELEVATION

SCALE: 1" = 30'-0"

NOTE:

1. CLEARWIRE ANTENNAS TO BE PAINTED TO MATCH EXISTING BUILDING.
2. ALL MOUNTING TO DONE USING ADHESIVE ANCHORS

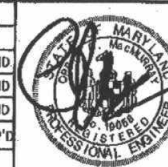


499 Col. Elleen Collins Blvd.
Syracuse, New York 13212
Phone 315-455-2000
Fax 315-455-9667
www.cscos.com

SITE NAME: 415 RUSSELL AVENUE
SITE NUMBER: MD-WSH010
415 RUSSELL AVENUE
GAITHERSBURG, MD 20877

clearw're
wireless broadband

NO.	DATE	REVISIONS	BY	CHK	APP'D
02-21-07		TAX PARCEL INFO	REM	ENK	RND
02-09-07		ANTENNAS	MFL	ENK	RND
10-19-06		ANTENNA LOCATIONS	MFL	ENK	RND
SCALE:	AS SHOWN	DESIGNED BY:	DRAWN BY:		



CLEARWIRE

BUILDING ELEVATION

DRAWING NUMBER

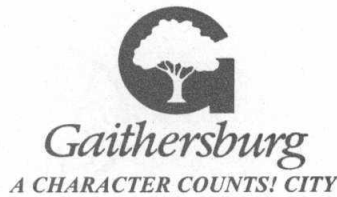
04

REV

3

BOA
#17
A-477(A)
5/10/07

11 x 17 8 5/16




April 19, 2007

Ashby Tanner
Law Section
The Gaithersburg Gazette
P.O. Box 6006
Gaithersburg, MD 20884

Dear Ashby:

Please publish the following legal advertisement in your April 25, 2007 issue of the *Gaithersburg Gazette*.

Sincerely,


Caroline H. Seiden
Planner

chs

ASSIGN CODE: PHA-477(A)/Acc. #133649

NOTICE OF PUBLIC HEARING

The Board of Appeals of the City of Gaithersburg will hold a public hearing on A-477 (A), filed by Clearwire US, LLC, on

THURSDAY
MAY 10, 2007
AT 7:30 P.M.

or as soon thereafter as it may be heard in the Council Chambers at City Hall, 31 South Summit Avenue, Gaithersburg, Maryland. The application requests a Special Exception to permit a telecommunications facility, including four panel antennas and associated equipment on the rooftop of 415 Russell Avenue, Asbury, Gaithersburg, Maryland. The property, owned by Asbury Methodist Village, Inc., is located in the R-90 (Medium Density Residential) Zone. The Special Exception is allowed by §24-29(5) in compliance with §24-167A(D)1. & 2. of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code).

Further information may be obtained from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

Caroline H. Seiden

Planner

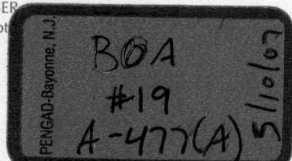
City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2098

301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@gaitheburgmd.gov • www.gaitheburgmd.gov

MAYOR
Sidney A. Katz

COUNCIL MEMBERS
Stanley J. Alster
Geraldine E. Edens
Henry F. Marraffa, Jr.
John B. Schlichting
Michael A. Sesma

CITY MANAGER
David B. Humptre



MODE = MEMORY TRANSMISSION

START=APR-19 12:57

END=APR-19 12:59

FILE NO.=226

STN NO.	COMM.	ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	<11>	GAZ LEG	004/004	00:01:11

-THE CITY OF GAITHERSBURG -

***** -PLAN AND CODE - ***** 3012586336- *****



Gaithersburg
A CHARACTER COUNTS! CITY

FAX TRANSMITTAL FORM

SEND TO:

Ashby Tanner
Gazette

FAX NO.:

FROM:

Caroline Seiden

Planning & Code Administration

FAX NO.:

301-258-6336

TELEPHONE NO.:

301-258-6330

DATE:

4/19/07

TIME:

12:47

NO. OF PAGES ATTACHED:

3

MESSAGE:

Ashby :
Attached are three legal ads (A-509(A), A-477(A)
and A-531) for the April 25 Gaithersburg Gazette.
Thanks!

**IF YOU EXPERIENCE DIFFICULTY IN RECEIVING THIS TRANSMISSION,
PLEASE CALL 301-258-6330**

City of Gaithersburg 31 South Summit Avenue Gaithersburg, MD 20877-2098
plancode@gaithersburgmd.gov www.gaithersburgmd.gov

MAYOR
Sidney A. Katz

CITY COUNCIL MEMBERS
Stanley D. Alster
Geraldine E. Edens
Henry F. Macraffa, Jr.
John B. Schlichting
Michael A. Sesma

CITY MANAGER
David B. Humpton

From: "Rice, Ashby" <arice@gazette.net>
To: "Caroline Seiden" <CSeiden@gaitthersburgmd.gov>
Date: 04/19/2007 1:24:32 PM
Subject: RE: Legal Ads for April 25

Hi Caroline,

Ads will be published as requested. Thank you!!!

Ashby Tanner
Legal Advertising Manager
TheGazette
301-670-2620 (office)
301-670-2634 (fax)
arice@gazette.net
LEGAL DEADLINES
Fridays Politics & Business Friday Edition: Tuesday's @ 5 pm
Classified ads for Montgomery Co. Editions: Tuesday's @ Noon
Classified ads for PG & Frederick Co. Editions: Wednesday's @ Noon
ALL A-Section ads: Friday's @ 5 pm

-----Original Message-----

From: Caroline Seiden [mailto:CSeiden@gaitthersburgmd.gov]
Sent: Thursday, April 19, 2007 12:50 PM
To: Rice, Ashby
Subject: Legal Ads for April 25

Hi Ashby:

Attached are three legal ads for the April 25, 2007 Gaithersburg Gazette. I forwarded FAXes for these as well. Thanks!

Caroline

Caroline Seiden
Planner
Staff Liason to Board of Appeals
Planning and Code Administration
301-258-6330 ext. 2128

31 S. Summit Avenue
Gaithersburg, MD 20877

cseiden@gaitthersburgmd.gov
www.gaitthersburgmd.gov

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland 20877
Telephone: 301-258-6550
A CHARACTER COUNTS! CITY
BOARD OF APPEALS
NOTICE OF PUBLIC HEARING

In accordance with Section 24-187 through 190 of the City of Gaithersburg Zoning Ordinance, the City of Gaithersburg Board of Appeals will conduct a Public Hearing as noted below.

Application Type: **SPECIAL EXCEPTION**
File Number: **A-477(A)**
Location: **415 RUSSELL AVENUE**
Petitioner: **ADAM KNUBEL FOR CLEARWIRE US, LLC**
Day/ Date/Time: **THURSDAY, MAY 10, 2007, 7:30 P.M.**
Place: **COUNCIL CHAMBERS**
31 SOUTH SUMMIT AVENUE

In accordance with Section 24-187, of the City of Gaithersburg Zoning Ordinance, the Board of Appeals will conduct a public hearing on the above-referenced application in the Council Chambers at City Hall, 31 South Summit Avenue, on **Thursday, May 10, 2007**, at 7:30 p.m. or as soon thereafter as this matter can be heard. In addition, the Planning Commission will be reviewing the above-referenced application on **Wednesday, May 2, 2007**, at 7:30 p.m. in the Council Chambers at City Hall.

The application requests a Special Exception to permit a **telecommunications facility**, including four panel antennas and associated equipment on the rooftop at 415 Russell Avenue, Asbury, Gaithersburg. The property is located in the R-90 (Medium Density Residential) Zone in Gaithersburg, Maryland. The special exception is allowed by Section 24-29(5) in compliance with Section 24-167A(D)1. and 2. of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code) subject to the review of the Board of Appeals.

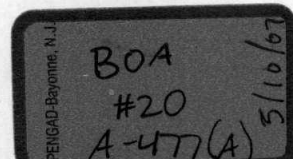
Further information may be obtained from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

CITY OF GAITHERSBURG

By: Caroline H. Seiden

Caroline H. Seiden
Planner

(over)



NOTICES SENT THIS 25TH DAY OF APRIL, 2007 TO:

PETITIONER :

Adam Knubel for Clearwire US, LLC, 7380 Coca Cola Drive, Suite 106, Hanover, MD 21076

INTERESTED PARTIES AND PROPERTY OWNERS WITHIN 200 FEET OF SUBJECT PROPERTY:

(A complete list of property owners notified is available in the Planning and Code Administration.)

CITY STAFF:

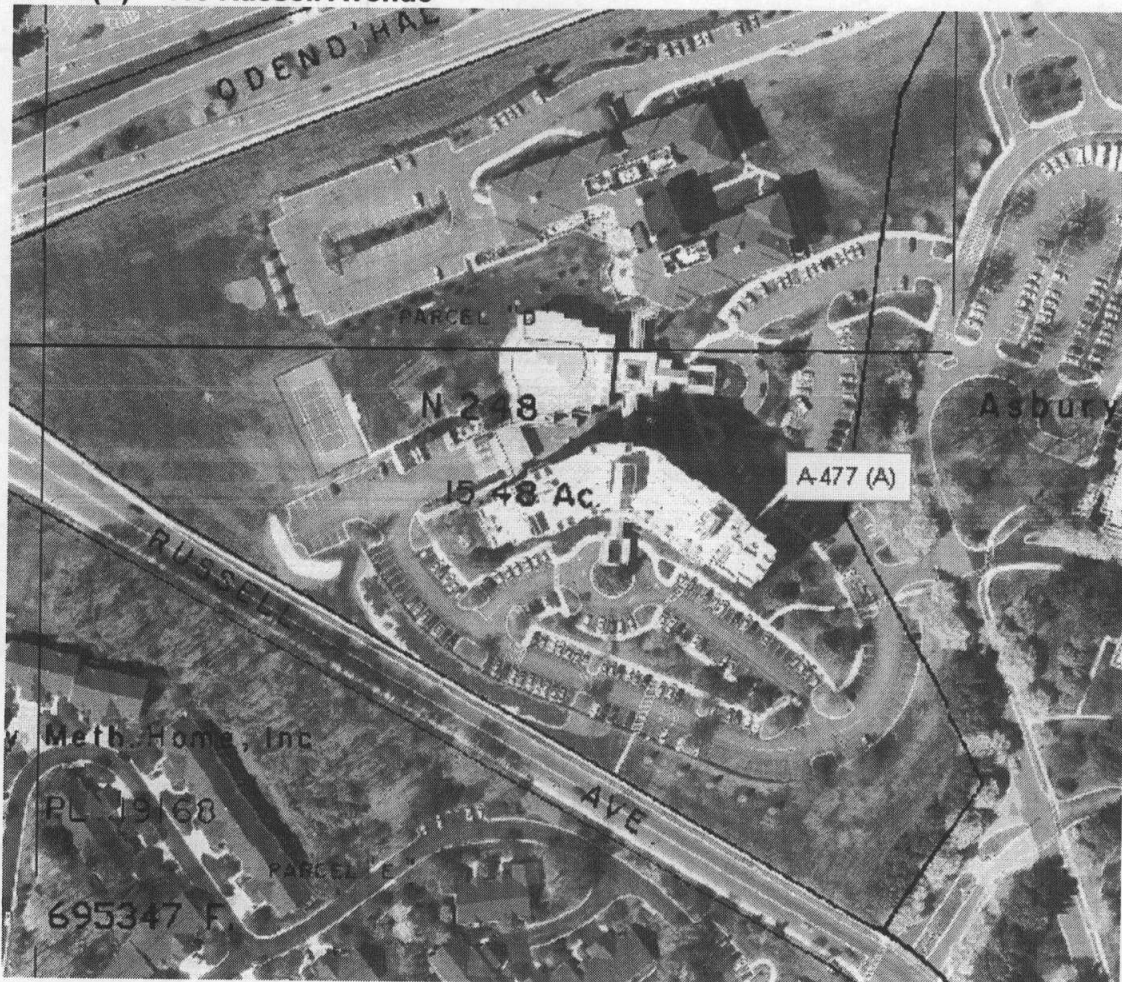
Dave Humpton, City Manager
Cathy Borten, City Attorney
Britta Monaco, Public Information Office
Doris Stokes, City Manager's Office
Greg Ossont, Director of Planning &
Code Administration
Trudy Schwarz, Community Planning Dir.
Jeff Baldwin, City Web Administrator (via email)

BOARD OF APPEALS MEMBERS:

Harvey Kaye, Chairperson
Richard Knoebel, Vice Chairperson
Gary Trojak
Victor Macdonald
Carol Rieg
David Friend, Alternate

PLANNING COMMISSION

A-477(A) – 415 Russell Avenue

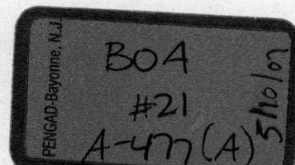


ADAM KNUBEL
CLEARWIRE US, LLC
7380 COCA COLA DRIVE
SUITE 106
HANOVER MD 21076

ASBURY METHODIST HOMES INC
201 RUSSELL AVE
GAITHERSBURG MD 20877

LAKEFOREST ASSOCIATES
C/O EPROPERTY TAX/DEPT 361
PO BOX 4900
SCOTTSDALE AZ 85261

SRC O P CORPORATION
C/O SEARS LAW DEPARTMENT
3333 BEVERLY RD FLOOR 6
HOFFMAN ESTATES IL 60179



CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland
(301) 258-6330

**BOARD OF APPEALS
RESOLUTION APPROVING**

AN APPLICATION REQUESTING A SPECIAL EXCEPTION TO ERECT
A TELECOMMUNICATIONS FACILITY CONSISTING OF FOUR (4)
ANTENNA PANELS IN THE R-90 (MEDIUM DENSITY RESIDENTIAL)
ZONE AS ALLOWED BY SECTION 24-29(5) OF THE ZONING ORDINANCE
(CHAPTER 24 OF THE CITY OF GAITHERSBURG CODE), AT 415 RUSSELL
AVENUE, PARCEL D, ASBURY METHODIST VILLAGE, GAITHERSBURG,
MARYLAND.

A-477(A)

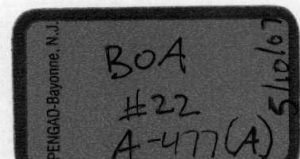
OPINION

This matter has come before the Board of Appeals as an amendment to a special exception request for a telecommunications facility consisting of an additional four (4) panel antennas on a roof of an existing building. The Board's authority in these matters is provided pursuant to Article 66B, Section 4.07, of the Annotated Code of the State of Maryland, and Section 24-187(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board "to hear and decide only those special exceptions as the Board of Appeals is specifically authorized to pass on by the terms of this Chapter." This case concerns a request for the approval of a telecommunications facility consisting of four (4) antenna panels on the roof of 415 Russell Avenue, Asbury Village, Gaithersburg, Maryland in the R-90 (Medium Density Residential) Zone (Tax Account 9-201-02890617).

Operative Facts

In 1998, the Mayor and City Council of Gaithersburg approved Ordinance O-21-98, which allows telecommunication facilities, subject to requirements, to be permitted by special exception [Section 24-29(5)] in the R-90 Zone. The purpose of a use by special exception is to allow the Board of Appeals to prescribe appropriate conditions and limitations on these uses.

The application and exhibits were filed by Adam Knubel on behalf of Clearwire US, LLC on April 6, 2007. The application requested an amendment to special exception A-477 to mount an additional four (4) rooftop antenna panels on the roof of 415 Russell Avenue, Gaithersburg, Maryland. The building was the subject of special exception A-477, granted to Nextel Communications of the Mid-Atlantic by the Board of Appeals in May 1998.



In accordance with Section 24-188(d), the Planning Commission reviewed the special exception request at their May 2, 2007, regularly scheduled meeting. Following testimony from Mr. Knubel, the Planning Commission analyzed the subject request and recommended approval of the application to the Board of Appeals with the following five conditions:

1. At such time as Clearwire US, LLC ceases to use this facility, the antennas, cabinets and associated equipment shall be removed by the applicant at the applicant's expense;
2. Installation of antennas and associated equipment must be completed by May 10, 2008;
3. If the installation is not complete by May 10, 2008, the petitioner must request a time extension, in writing, prior to May 10, 2008 and each subsequent year thereafter until such time as the installation is complete;
4. Applicant is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in A-477(A) Exhibit # 8 and #9.

The public hearing was held by the Board of Appeals on Thursday, May 10, 2007, at 7:30 p.m. at City Hall. Notice of the public hearing was published in the April 25, 2007, issue of the *Gaithersburg Gazette*; the property was properly posted, and notice of public hearing was sent to the applicants and surrounding property owners on April 25, 2007.

The Board reviewed 22 exhibits, including the Applicant's summary of proof and statement, the lease agreement, the antenna location plan and specifications, propagation maps, the recommendation of the Planning Commission, building elevations and a staff draft resolution of approval. Argument on behalf of the applicant was presented by Mr. Knubel. There was no additional testimony either in favor of or in opposition to the subject request. Following the testimony and arguments, the Board closed the record.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions which define the nature and extent a special exception which may be granted by this Board and the criteria upon which they may be approved.

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DIVISION 2. R-90 ZONE. MEDIUM DENSITY RESIDENTIAL

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Sec. 24-29 . Uses permitted by special exceptions.

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- (5) Telecommunications facilities, subject to requirements of Section 24-167A()(2).

* * *

Section-24-167A. Satellite television antennas and towers, poles, antenna and /or other structures intended for use in connection with transmission or receipt of radio or television signals or a and telecommunications facilities.

* * *

- (C) Telecommunications facilities.

1. Standards when allowed as permitted use:

The following standards apply in those zones in which telecommunications facilities are allowed as a permitted use.

- (a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least 30 feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least 30 feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than 25% of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than 25% of the roof area may be approved by the board of appeals as a special exception in accordance with Sub-section 2 of this Section.
- (b) Telecommunications antennas may be attached to a free standing monopole on privately owned land. A free standing monopole including antenna structure for a telecommunications facility is permitted up to 199 feet in height with a set back of one foot for every foot of height from all adjoining residentially zoned properties, and a set back of one-half foot for every foot of height from adjoining non-residential properties.
- (c) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed 560 square feet

and 12 feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable set back standards of the zone in which the property is classified.

- (d) *Public Property.* A private telecommunication facility may be located on public property or attached to an existing structure owned or operated by the City, or by a county, state, federal or other governmental agencies subject to the same conditions and requirements as are applicable to such facilities on privately owned property. In addition, the use of any property owned by the City of Gaithersburg shall be at the discretion of the City Manager. A private telecommunications facility may be located on the property of an independent fire department or rescue squad subject to the same requirements as are applicable to private property.
- (e) All such antennas shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.
- (f) No signs are permitted in connection with any telecommunications facility.
- (g) No lights are permitted on any monopole or antenna unless required by the Federal Communications Commission, the Federal Aviation Administration, or the City.
- (h) All monopoles erected as part of a telecommunications facility must maintain at least three telecommunications carriers provided, however, that a monopole or other support structure designed or engineered to accommodate less than three telecommunications carriers may be permitted by special exception when approved by the Board of Appeals.
- (I) No more than one monopole is permitted on a lot or parcel of land and, no two monopoles may be located within 1000 feet of each other in any zone in which such facilities are permitted uses. In any such zones more than one monopole may be permitted on a lot or parcel and two or more monopoles may be located within 1,000 feet of each other by special exception approved by the Board of Appeals. A special exception to permit either the location of more than one monopole on a lot or parcel or two or more monopoles within 1,000 feet of each other may only be approved by the Board of Appeals if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.
- (j) Every free standing monopole or support structure and any unmanned equipment or

cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

2. Standards and requirements applicable to special exceptions for telecommunications facilities.
 - (a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:
 - (1) Complies with all of the standards contained in Section 167A(C)1.
 - (2) The location selected is necessary for the public convenience and service.
 - (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.
 - (4) The location selected for a monopole is more than 300 feet from either the nearest boundary of a historic district or more than 300 feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.
 - (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennas and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennas. The holder of a special exception may not refuse to permit the co-location of two additional antennas and related equipment buildings or cabinets unless colocation is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.
 - (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least 30 feet in height in any multi-family residential zone or non-residential zone; and 50 feet in height in any one family residential zone. Rooftop telecommunications facility may not be located on a one family residence.
 - (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the Board of Appeals must find that it is to be located at a height at least 30 feet on a building located in a multi-family residential zone or non-residential zone and at a height greater than fifty (50) feet in any one family residential zone. A telecommunications antenna must not be

mounted on the facade of a one family residence.

- (8) In any residential zone the board of appeals must find that the equipment building or cabinet does not exceed 560 square feet and 12 feet in height, and is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three feet. The Board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.
 - (9) The board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.
 - (10) The board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional 10 percent. The board must also find that the structure is not visually intrusive.
 - (11) The board must also find that a free standing monopole or other support structure is proposed to hold no less than three telecommunications carriers. The board may approve a monopole or other support structure with fewer than three telecommunications carriers if the applicant establishes that (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or (b) the applicant establishes that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.
- (b) Area requirements.
- (1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (C).
 - (2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.
 - (3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the perimeter property line.

- (4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone, provided the board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.
- (c) Location Requirements for structure. A monopole or other support structure must be located as follows:
 - (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.
 - (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.
- (d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.
- (e) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the Federal Communications Commission, the Federal Aviation Administration or the board.
- (f) Removal of Telecommunications facilities. Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by the telecommunication carrier.

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ARTICLE VII. Board of Appeals.

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Sec. 24-187. Powers and duties.

The board of appeals shall have the following functions, powers, and duties:

* * *

(b) Special Exception. To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The board of appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the board shall be implemented in accordance with the terms and/or conditions set forth in the board's decision and shall include the requirement that the petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

The board of appeals shall prescribe a time limit within which the use for which the special exception is required shall be commenced or completed. Failure to begin or complete, or both, such action within the time limit set shall void the special exception unless otherwise extended by the board.

* * *

Sec. 24-189. Findings required.

* * *

(b) Special exceptions. A special exception may be granted when the board of appeals finds from the evidence of record that the proposed use:

(1) Is a permissible special exception within the zone and that the application therefor complies with all procedural requirements set forth in this article;

(2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter;

(3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;

(4) Will be in harmony with the general character of the neighborhood

considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;

(5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;

(6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

(7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and

(8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

Findings and Conclusions

Based on the appellant's binding testimony and evidence of record, the Board finds that the application proposes to install and operate four (4) panel-type antennas measuring approximately 36 inches high x 6 inches wide x 5 inches in depth. The location of the antennas is within the R-90 (Medium Density Residential) Zone and is allowed by special exception as stated in Section 24-29(5) of the Zoning Ordinance (Chapter 24 of the City Code).

The applicant has shown that the building height of the multi-family structure of 415 Russell Avenue is approximately 131 feet, and the proposed use will not include rooftop equipment buildings or cabinets. The equipment, which is located in the building penthouse, will comply with the requirements of the statute. The unmanned equipment for these antennas is located within the building. The antennas will be mounted and painted in order to blend into the existing architecture of the building and to ensure compatibility with the exterior design and character of the building in order to camouflage the antennas. The propagation maps have shown that location selected will enhance the coverage for public convenience and service and fill a hole within the Clearwire system.

The Board finds that the applicant has proved that the application is permissible by Section 24-29(5) and that it complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals. The applicant has shown compliance with the standards and requirements specifically set forth for telecommunication facilities in Sections 24-167A(D)(1) and (2) as discussed in the previous paragraph.

The testimony of the applicant's representatives has shown that such use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding

properties or the general neighborhood; and will cause no objectionable, vibrations, fumes, odors, dust, toxicity, glare or physical activity. The applicant has shown that this use will also not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

Because the proposed telecommunication facilities are to be blended into the materials and colors of the building which is 131 feet in height on an elevation which is approximately 20 feet above the street level of the adjoining streets, the applicant has shown that this application is in harmony with the general character of the neighborhood in relation to the design and scale of the antennae. This will also maintain the residential appearance of the building and not require additional landscaping, screening or fencing. Because the use will only require monthly maintenance checks consisting of one vehicle, this use will not impact the traffic or parking conditions within the neighborhood. The existing multi-family building is already served by adequate public services and facilities and the proposed use will not increase the need for more services.

In conclusion, the Board of Appeals has found that the petitioner has submitted sufficient evidence and testimony for the approval of a telecommunications facility consisting of four (4) antenna panels at 415 Russell Avenue, Asbury Methodist Village, Gaithersburg, Maryland. The applicant has shown compliance with Sections 24-167A(C)(1) and (2) and 24-189(b) subject to the following condition:

1. At such time as Clearwire US, LLC ceases to use this facility, the antennas, cabinets and associated equipment shall be removed by the applicant at the applicant's expense;
2. Prior to the issuance of a building or site work permit, petitioners are to provide an executed lease from the property owner that requires at such time as Clearwire US, LLC ceases to operate, that the antennas, cabinets and associated equipment must be removed;
3. Installation of antennas and associated equipment must be completed by May 10, 2008;
4. If the installation is not complete by May 10, 2008, the petitioner must request a time extension, in writing, prior to May 10, 2008 and each subsequent year thereafter until such time as the installation is complete;
5. Applicant is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in A-477(A) Exhibit # 8 and #9.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Board of Appeals of the City of Gaithersburg on the 10th day of May, 2007, that Case A-477(A), the petition of Adam Knubel for

Clearwire US, LLC, requesting an amendment to special exception A-477 for a telecommunications facility in the R-90 (Medium Density Residential) Zone on the roof of 415 Russell Avenue, Gaithersburg, Maryland, be APPROVED with the conditions stated above in the Findings and Conclusions.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 10th day of May, 2007. Board Members Kaye, Knoebel, Macdonald, Tojak, and Rieg being present and voting in favor of the action.

Harvey Kaye, Chairperson Board of Appeals	DATE
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THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in public meeting assembled, on the 10th day of May, 2007.

Caroline H. Seiden, Planner
Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered be appealed by any person aggrieved by the decision of the Board and a part to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

The Board of Appeals may reconsider its decision in accordance with its Rules of Procedure upon the request of any party; provided such request is received in writing not more than ten (10) days from the date the Board of Appeals renders its final decision.

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Board of Appeals

FROM: Planning Commission

VIA: Caroline Seiden, Planner

DATE: May 3, 2007

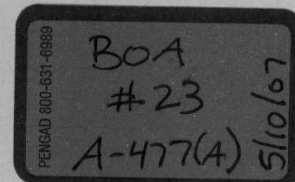
SUBJECT: A-477(A) – Adam Knubel for Clearwire US, LLC

The application requests a Special Exception to erect a Telecommunications facility, including four panel antennas and associated equipment on the rooftop of 415 Russell Avenue, Asbury, Gaithersburg, Maryland. The property, owned by Asbury Methodist Village, Inc., is located in the R-90 (Medium Density Residential) Zone. The Special Exception is allowed by §24-29(5) in compliance with §24-167A(D)1.& 2. of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code).

At its regular meeting on May 2, 2007, the Planning Commission made the following motion:

Commissioner Levy moved, seconded by Commissioner Winborne, to recommend Special Exception Case A-477(A) for APPROVAL to the Board of Appeals with five conditions:

1. At such time as Clearwire US, LLC ceases to use this facility, the antennas, cabinets and associated equipment shall be removed by the applicant at the applicant's expense;
2. Installation of antennas and associated equipment must be completed by May 10, 2008;
3. If the installation is not complete by May 10, 2008, the petitioner must request a time extension, in writing, prior to May 10, 2008 and each subsequent year thereafter until such time as the installation is complete;



4. Applicant is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in A-477(A) Exhibit # 8 and #9.

Vote: 5-0